

JAMES M. THOMSON
COMMISSIONER OF INSURANCE

THOMAS S. NARDO
FIRST DEPUTY COMMISSIONER

COMMONWEALTH OF VIRGINIA



BOX 1157
RICHMOND, VA. 23
TELEPHONE (804) 786

STATE CORPORATION COMMISSION
BUREAU OF INSURANCE

July 1, 1986

ADMINISTRATIVE LETTER
1986-14

TO: All Interested Parties

RE: Senate Bill 250, Recodification of the Insurance Code - Title 38.2

Attached is a summary of the substantive changes to the insurance code resulting from the recodification which passed as SB 250 by the 1986 General Assembly of Virginia. Other 1986 legislation that enacted or amended and reenacted insurance-related statutes has already been summarized in Administrative Letter 1986-6 and is not included here. Due to the extent of the code revision, only substantive changes are addressed in this letter. Editorial, reorganizational, and clarification modifications have not been incorporated into the summary. Copies of the bill, itself, are available for \$5.00 each from Legislative Information at 804/786-6530. In addition, House Document 17 is available and contains the report of the Code Commission to the General Assembly and includes drafting notes clarifying substantive changes to those sections that were modified, as well as a cross reference table for the new numbering system. Please note, however, that H.D. 17's version of Title 38.2 does not include amendments to the bill made by the General Assembly.

The effective date of Title 38.2 is July 1, 1986. There is, however, a 12-month phase-in period for complying with the provisions for policies, contracts, certificates, applications, riders, or endorsements.

Each organization to which this letter is being sent should review the attachment carefully and see that notice of these changes is directed to the proper persons (including its licensed representatives) to insure that appropriate action is taken to effect compliance with these new legal requirements.

If you have any questions about the changes due to the recodification, my staff is ready to assist you.

Sincerely,

James M. Thomson
Commissioner of Insurance

JMT:bt
Attachment

INSURANCE CODE CHANGES

SUBTITLE I - GENERAL PROVISIONS

Chapter 1. General Provisions.

1. **Definitions.** Definitions having a title-wide application have been moved to this chapter for easy reference. Definitions that are chapter-specific have been left in their individual chapter. (38.2-100)
2. **New Classes of Insurance.** Several new classes of insurance have been defined to provide for coverages now being written, such as homeowner's insurance, variable annuities, and mortgage guaranty insurance. (Article 2).

Chapter 2. Provisions of a General Nature.

1. **Management and Exclusive Agency Contracts.** Former § 38.1-29.1, dealing with management and exclusive agency contracts, has been expanded to give the Commission the authority to withdraw approval of these contracts. (38.2-203)
2. **Insurance Activities of Banks.** The "grandfather provision" that allows financial institutions that were licensed to sell insurance as of January 1, 1977 to continue to do so, (part of former § 38.1-327.10) now clarifies that such financial institutions may hire newly-licensed agents without losing their grandfather status. (38.2-205)
3. **Penalties and Restitution Payments.** A new title-wide general penalties section replaces former § 38.1-40 as well as numerous other chapter-specific penalty sections throughout the title. This new section also provides for restitution payments under certain circumstances such as overcharging rates. Restitution will be limited to the amount of the direct financial loss.

The new penalty section provides for: (a) making the penalties apply to violations of regulations; (b) distinguishing between the penalties for negligent and knowing or willful violations; (c) increasing the maximum penalty for violations without knowledge or intent to \$1,000 with an aggregate maximum penalty of not more than \$10,000 for a series of similar violations; (d) a \$5,000 penalty for each knowing or willful violation with no maximum aggregate penalty; and (e) exempting from the penalty provisions violations resulting solely from electronic or mechanical malfunction. (38.2-218)

4. **Cease and Desist.** A new section has been added providing title-wide authority for cease and desist orders. This section replaces the cease and desist provisions found in individual chapters. These former chapter-specific sections have been deleted. (38.2-219). Former § 38.1-224 (now 38.2-2002) contains a provision somewhat similar to a cease and desist

case.

5. **Injunctions.** A new section has been added providing title-wide authority for issuing injunctions. This section replaces the injunction provisions found in individual chapters. These former chapter-specific sections have been deleted. (38.2-220). Former § 38.1-132 (now 38.2-1507) is a special case dealing with delinquency proceedings and will not be deleted. The authority of the Commission to issue injunctions is already contained in § 12.1-13. However, new § 38.2-220 is more detailed and provides a ready reference for those subject to Title 38.2.
6. **Appeals.** The appeal provision in Title 12.1 applying to all orders, judgments, etc., of the Commission has been incorporated by reference in a new section, § 38.2-222. The various appeal sections currently appearing throughout the title have been deleted.
7. **Rules and Regulations.** A new section has been added providing for authority on a title-wide basis to issue rules and regulations and also to enter orders. It will replace a number of similar sections from Title 38.1 which have now been deleted. (38.2-223).
8. **Procedures.** A new section has been added providing for the application on a title-wide basis of the procedures of Chapter 5 of Title 12.1 (Procedure Before the Commission and Appeals) to proceedings under Title 38.2. (38.2-224). While Chapter 5 of Title 12.1 would apply to Title 38.1 and new Title 38.2 even without § 38.2-224, this section was added for ready reference.
9. **Penalties May Be Paid to the Guaranty Association.** Former § 38.1-42 has been amended so that the Commission is authorized to direct payment of penalties for civil violations to the Guaranty Associations rather than the Literary Fund if the Commission determines a need for such payment. Penalties for criminal violations will still be allocated to the Literary Fund in all instances. (38.2-225)
10. **Proof of Financial Responsibility.** A new section has been added to provide the Commission the authority to enforce the filing of proof of financial responsibility as required by Title 46.1 of the Virginia Code. (38.2-228)
11. **Title-wide Immunity Section.** A new immunity section provides that there shall be no liability and no cause of action against (i) any person who, in good faith, furnishes information relating to an insurance investigation when information is furnished under requirements of law or at the request or direction of the Commission, or (ii) Commissioners and their employees or agents acting in good faith investigating insurance transactions or disseminating official reports relating to official investigations of such transactions. (38.2-229)

Chapter 3. Provisions Relating to Insurance Policies and Contracts.

1. **Insured's Application or Consent Required for Life or Accident and Sickness Insurance.** Former § 38.1-330 has been amended so that the person to be insured under an individual life or accident and sickness

writing at the time of the making of the contract, except if the insurance is purchased on a spouse, or on a minor where there is dependency or an insurable interest in the life of a minor. Knowledge of the insurance will no longer be sufficient. (38.2-302)

2. **Life and Accident and Sickness Insurance Form Filing Exemption.** A new subsection has been added to former § 38.1-342.1 so that the Commission has the authority to exempt certain categories of life and health insurance forms from filing and approval requirements. This change is intended to provide the Bureau of Insurance with flexibility regarding the filing and approval of group contract forms since many group contracts are tailor-made. In addition, the section now requires filing and approval of group accident and sickness forms, health services contracts, dental services contracts, optometric services contracts, HMO forms, and fraternal forms, including individual certificate forms for all above types of group insurance. (38.2-316)
3. **Property and Casualty Form Disapproval Standards.** More detailed standards for disapproval of property and casualty forms have been added to the Code. Existing § 38.1-279.48:1 has been moved from the competitive rating chapter and revised to include a new provision for disapproval if the coverage is of such a limited nature as to be contrary to the public interest. (38.2-317)

Chapter 4. Assessments For Administration of Insurance Laws and Declarations of Estimated Assessments by Insurers.

1. **Assessment Provisions Updated.** Former §§ 38.1-45, 38.1-48.4 and 38.1-48.6 have been changed to make this chapter consistent with the recently amended tax code (Title 58.1).
 - a. The penalty rate in former § 38.1-45 for failure to pay an assessment when due has been increased from 5% to 10%. This is consistent with § 58.1-2507. Interest will also be charged on the overdue assessment. (38.2-403)
 - b. The interest rate in subsection H of former § 38.1-48.4 has been increased from .5 to .75 percent with an extension and one percent per month without an extension. (38.2-409)
 - c. The penalty rate under subsection A of former § 38.1-48.6 for failure to pay an estimated assessment has been changed to the interest rate established pursuant to § 6621 of the Internal Revenue Code which is referred to in § 58.1-15. (38.2-411). This is consistent with § 58.1-2527.
 - d. The percentage of the portion of installments which must be paid without subjection to penalty provided for in former §§ 38.1-48.6 B and 38.1-48.6 D has been increased from 80% to 90% of the estimated assessment. (38.2-411 B and 38.2-411 D). This is consistent with the change in § 58.1-2527.
2. **Appeal from Assessment.** Former § 38.1-47 has been clarified to specify that appeals from assessment must be in accordance with the Rules of Court applicable to appeals from the State Corporation Commission. (38.2-405)

1. **Misrepresentation and False Advertising.** Former § 38.1-52.1 has been amended to place more responsibility on insurers to control material prepared by agents as follows: "No person shall make, issue, circulate, or cause or knowingly allow to be made, issued or circulated...". (38.2-502)
2. **False Information and Advertising Generally.** Former § 38.1-52.2 has been amended to place more responsibility on insurers to control material prepared by agents as follows: "No person shall knowingly make, publish, disseminate, circulate, or place before the public, or cause, or knowingly allow, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public...". (38.2-503)
3. **Blindness, Other Impairments and Unfair Discrimination.** The language in former § 38.1-52.7 that prohibits refusing to insure, limiting the coverage or charging a different rate for the same coverage solely because of blindness, partial blindness, or mental or physical impairments has been modified to delete the phrase "or is related to actual or reasonably anticipated experience." However, it will not be unfair discrimination to limit coverage or charge higher rates because of blindness or partial blindness, or mental or physical impairments if the decision is based on sound actuarial principles. In addition, the prohibition against discrimination solely because of geographical location now applies to life and health risks as well as property and casualty. (38.2-508)
4. **Rebates.** Item 3 of former § 38.1-52.8 B has been changed to allow for considering the experience of a group and adjusting the rate for the next year, instead of requiring retroactive rate adjustments. In addition, Item 4 has been changed to allow for employees of insurers to receive premium reductions for insurance on their lives and property and the lives of their spouses and dependent children. (38.2-509)
5. **Unfair Claims Settlement Practices.** A new subsection has been added to former § 38.1-52.9 providing that the section does not create a private cause of action. (38.2-510)
6. **Favored Agent or Insurer; Coercion of Debtors.** Former § 38.1-52.12 was amended by adding: (a) a provision prohibiting unreasonably disapproving a policy provided by a debtor on his own life to protect a loan; (b) a provision that a borrower must be told in writing that insurance related to credit extensions may be purchased from an insurer or agent of the borrower's choice; and (c) a new subsection C to ensure that a written commitment to loan money or extend credit is secured prior to the solicitation of insurance. (38.2-513)

Chapter 6. Insurance Information and Privacy Protection.

1. **Application of Chapter.** The reference in former § 38.1-57.4 to January 1, 1982, has been deleted to clarify that the access and correction provisions of former §§ 38.1-57.11 and 38.1-57.12 (38.2-608 and 38.2-609), and the disclosure provisions of former § 38.1-57.16 (38.2-613), apply to information collected before January 1, 1982. (38.2-601)
2. **Adverse underwriting decisions; new penalties.** The definition of "adverse underwriting decision" in former § 38.1-57.5 for life and accident and

limitations, exceptions or benefits other than those applied for". (38.2-602) In addition, the new general penalties provisions (38.2-218) will apply instead of the chapter's requirements that a violation be "knowing" before a fine of more than \$500 can be imposed or that there must be a violation of a previously issued cease and desist order.

3. **Disclosure Limitations and Conditions.** A paragraph 18 has been added to former § 38.1-57.16 to provide disclosure of necessary personal information about an individual collected in connection with an insurance transaction to a lienholder, mortgagee, assignee, lessor or other person having a legal or beneficial interest in the insurance policy. (38.2-613)

Chapter 7. Antitrust Provisions.

1. **Antitrust Penalties.** Antitrust violations will be subject to the penalty provisions of the Virginia Antitrust Act, § 59.1-9.1 et seq. (38.2-704)
2. **Applicability of Antitrust Act.** A new section was added providing that conduct subject to regulation, review or examination pursuant to Title 38.2 shall, in addition, be subject to the provisions of the Virginia Antitrust Act in Title 59.1. (38.2-705)

Chapter 8. Service of Process.

1. **Definitions.** "Insurer" has been defined to include prepaid legal, dental and optometric service plans, health services plans and health maintenance organizations (38.2-800). "Agent" has been defined to include agents for prepaid legal, dental and optometric service plans, and health agents (38.2-808).
2. **Attorney's Fees.** The minimum attorney fee provided in former § 38.1-70 has been raised from \$25 to \$100. (38.2-807)

Chapter 9. Transition Provisions.

1. **Effective date.** Some sections specifically provide for their own effective date. Unless otherwise provided, the official effective date of Title 38.2 is July 1, 1986.
2. **12-Month Transition Period.** In order to provide for a reasonable period to adjust to the new code provisions, companies will be given 12 months from the date of the Code enactment to use their existing forms. (38.2-903)

SUBTITLE II - FINANCIAL REGULATIONS

Chapter 10. Organization, Admission and Licensing of Insurers.

1. **Deposits Required of Insurers Generally.** The requirement in former §§38.1-72 and 38.1-74 that the §38.1-108 deposit be made before a charter is granted has been deleted. Section 38.1-108 (now 38.2-1045) itself will still require the deposit before a license is issued.

2. **Additional Requirements of Articles of Incorporation.** The requirement that the name of a domestic mutual insurer contain the word "mutual" provided for in former § 38.1-75 has been deleted. Also, the requirement that the name not be confusingly similar to the name of any other company doing business in Virginia has been deleted because Title 13.1 contains similar provisions that apply to domestic mutual insurers. The remainder of § 38.1-75 appears in 38.2-1002.
3. **Certain Mutual Companies May Convert To Stock.** A provision has been added to former § 38.1-79 allowing a mutual insurer to convert to a stock insurer without meeting the minimum capital and surplus requirements at conversion time if the Commission finds the insurer will be able to meet the requirement within a reasonable time. (38.2-1005)
4. **Foreign and Alien Companies Filing Copies of Charters.** Former §38.1-8 requiring foreign and alien companies to file copies of their charters has been deleted because §§13.1-107 and 13.1-270 already require this. The filing of mutual company bylaws will be required administratively.
5. **Annual Renewal of License.** Former §38.1-98 has been revised to allow an insurer's license to be renewed on a restricted basis if the Commission finds an impairment of required capital and surplus or if the insurer has not met all licensing requirements as provided for in § 38.2-1024. (38.2-1025).
6. **Suspension or Revocation Published.** The time provided in former § 38.1-102 for publishing a notice of the suspension or revocation of an insurer's license has been shortened from sixty days after final judgment to thirty days (if no appeal is taken) to be consistent with the thirty day period for appealing a decision of the Commission. (38.2-1043)
7. **Return of Deposits.** The last sentence of former § 38.1-112 has been deleted to avoid any possible interpretation that an out-of-state court has jurisdiction over the §38.2-1045 (formerly § 38.1-108) deposit. The deleted sentence has been replaced with a new subsection B that coordinates the release of the deposit with Title 38.2, Chapter 3 (Rehabilitation and Liquidation of Companies) when there is a delinquency proceeding. (38.2-1048)

The new subsection B also replaces the last three sentences of former § 38.1-110 (now 38.2-1046), which had provided for a class action to obtain release of the deposit, so there will be one procedure for releasing the deposit when there is a delinquency proceeding. This new procedure will require the appointment of a receiver in Virginia under §38.2-1521 to obtain the release of the deposit where a foreign or alien insurer is the subject of a delinquency proceeding in another state or country. Under this new procedure the priority in proposed §38.2-1046 for distribution of the deposit will be controlling over the priority in Title 38.2, Chapter 15 (Rehabilitation and Liquidation of Insurers), so that wages and certain other liabilities given priority in Chapter 15 will not come ahead of policyholders' claims on the deposit.

8. **Alternate Deposit Requirements.** The alternate insurer deposit provided for in former § 38.1-113 has been increased from \$200,000 to \$500,000 in recognition of inflation and the multi-state purpose of this deposit, and

Chapter 11. Captive Insurers.

1. **Licensure After Examination.** The mandatory examination of a captive insurer provided for in paragraph 2 of subsection C of former § 38.1-9 before a license is issued has been made discretionary. (38.2-1104)

Chapter 12. Reciprocal Insurance.

1. **Power to Enter Into Reciprocal Insurance Contracts.** Former §§ 38.1-69 and 38.1-693 have been merged into one section and amended to include municipalities and other governmental authorities within the definition of "person", thus allowing these local governmental bodies another avenue to follow in obtaining insurance coverages. (38.2-1204)
2. **Alien Reciprocals.** Former § 38.1-696 has been amended so that an alien reciprocal will be allowed to apply for a license in this Commonwealth directly from its domiciliary country rather than having to go through another state. This parallels a 1985 legislative change for regular alien insurance companies. (38.2-1208)
3. **Subscriber's Liability.** The requirement in former § 38.1-702 that each assessable policy contain a statement of the contingent liability has been expanded to require that this statement be on the front of the policy in large type capital letters. (38.2-1212)
4. **Agent For Service of Process.** The agent for service of process for reciprocals has been changed from the Secretary of the Commonwealth, as provided for in former § 38.1-706, to the Clerk of the Commission. (38.2-1216)
5. **Attorney to File Bond.** The bond of \$25,000 required in former § 38.1-711 of the attorney-in-fact of a reciprocal has been changed to a bond in an amount set at the discretion of the Commission but not less than \$50,000. (38.2-1220)

Chapter 13. Reports, Reserves and Examinations; Insurance Holding Companies.

1. **False Statements, Reports, etc.** Former § 38.1-163 has been amended so that filing false or fraudulent statements, reports or other instruments shall be a Class Five felony rather than such actions being deemed perjury. Surplus lines brokers have been specifically included. (38.2-1304)
2. **Valuation of Stocks and Other Securities.** A new subsection C was added to former § 38.1-167 to set forth three valuation options that can be used for estimating the value of certain assets. These methods are book value, market value and acquisition cost. Additionally, the Commission is given the authority to specify the manner of valuing a subsidiary if a situation warrants such intervention. (38.2-1306)
3. **Unearned Premium Reserves.** Former § 38.1-171 has been changed to require mortgage guaranty insurance unearned premium reserves to be

calculated in a manner similar to other property and casualty unearned premium reserves. (38.2-1312)

4. **Mortgage Guaranty Insurance Contingency Reserve.** Subsection C of former § 38.1-173.2 has been changed to conform with the NAIC standard. Previously, mortgage guaranty insurers could utilize contingency reserve when the loss ratio exceeded 20%. This loss ratio has been increased to 35%. (38.2-1315)
5. **Examinations.** Former § 38.1-174 provided only that the Commission could examine the affairs of any insurance company authorized to do business in the state. The authority of the Commission has been extended to include the power to examine the affairs of anyone licensed under this title. (38.2-1317)
6. **Expense of Examination.** A new subsection C has been added to former § 38.1-176 to allow the Commission to employ experts, at the expense of the person examined, to perform accounting services when the Commission deems that the person's accounting is unacceptable. (38.2-1319)
7. **Insurance Holding Company System.** The definition of "insurance holding company system" has been broadened to mean two or more affiliated persons, one or more of which is a person licensed pursuant to this title. (38.2-1322)
8. **Dividends and Other Distributions.** The definition of "extraordinary dividend" in former § 38.1-178.3 has been amended so that it now means any dividend or distribution of cash or other property whose fair market value together with that of other dividends or distributions made within the preceding twelve months exceeds either [as opposed to "the greater of" in the former section] (i) ten percent of the insurer's surplus to policyholder or (ii) the net gain from operations of the insurer, if a life insurer, or the net income if the insurer is not a life insurer. This change establishes a lower threshold for requiring Commission approval and is consistent with the NAIC model. (38.2-1330)
9. **Prior Approval.** Former § 38.1-178.3:1 has been amended so that prior approval will be required for investments resulting in holdings of assets in affiliated companies in excess of fifty percent of surplus. (38.2-1331)

Chapter 14. Investments.

1. **Classification of Investments.** A new subsection B has been added to former § 38.1-217.3 to give the Commission authority, upon application by an insurer, to classify investments not already classified in the chapter. (38.2-1402)
2. **Preferred Stocks.** A provision has been added to former § 38.1-217.6 for a pro forma dividend standard for preferred stocks issued less than three years before the date of the investment. (38.2-1423)
3. **Lending of Securities.** The collateral requirement provided for in former § 38.1-217.32 has been reduced from 103 percent to 102 percent. (38.2-1429)

4. **Investments.** United States government bond mutual funds have been added to former § 38.1-217.35 as a Category I investment for domestic insurers. (38.2-1432)
5. **Limitations of Mortgages.** Subsection A of former § 38.1-217.40 has been rewritten to allow the loan-to-value ratios for leasehold mortgages and mortgages to employees of insurers to be exceeded if the excess is covered either by FHA, VA, etc. or by private mortgage guaranty insurance. The existing options for other mortgages to be exceeded under these conditions will be continued. (38.2-1437)
6. **Real Estate.** The term "real estate" as used in former § 38.1-217.44 has been defined to include a leasehold of real estate having an unexpired term of twenty years or more. (38.2-1441)
7. **Guaranty Association Obligations.** A new section has been added providing that a domestic insurer may invest in any obligation of the two Virginia guaranty associations that is not in default. (38.2-1442)

Chapter 15. Rehabilitation and Liquidation of Insurers.

1. **Priority of Claims for Wages.** The amount that employees of an insolvent insurer can collect for unpaid wages has been raised from the \$300 provided for in former § 38.1-138 to \$1,000. (38.2-1514)

Chapter 16. Virginia Property and Casualty Insurance Guaranty Association.

1. **Name Change.** The term "property and casualty" has been added to the Association's name to differentiate it from the Virginia Life, Accident and Sickness Insurance Guaranty Association.
2. **Application.** Former § 38.1-758 has been amended to clarify that the coverage of the Guaranty Association applies only to member insurers. In addition, captive insurance companies and home protection companies have been added to the list of companies not eligible for membership to clarify current practice. (38.2-1601)
3. **Duties and Powers of the Association.** Former § 38.1-763 has been amended to conform to the NAIC model with respect to filing claims with the liquidator or receiver of an insolvent insurer, stating that a covered claim shall not include any claim filed with the Association after the final date set by the court for the filing of claims against the liquidator or receiver of an insolvent insurer. In addition, a provision has been added to allow for the repayment of increased assessments made to certain insurers resulting from a deferral of assessments to other insurers. Repayment shall be made when the deferred assessment insurers bring their contributions up to date. (38.2-1606)
4. **Additional Funds Paid to Association.** A new article has been added to this chapter for the establishment of a safety fund for the Association. The article gives guidance to the Commission in administering § 38.2-221. Additional provisions are included on the priority, use, and repayment of funds not derived from assessments. Of particular significance is the Commission's authority to direct funds derived from penalties to the safety fund. The establishment of the safety fund should allow the Association to

handle insolvencies, particularly small insolvencies, more expediently.
(Article 2)

Chapter 17. Virginia Life, Accident and Sickness Insurance Guaranty Association.

1. **Investments.** Former § 38.1-482.22 has been amended so that investments by an insurer in evidences of indebtedness issued by the Association will qualify as Category 1 investments. (38.2-1704)
2. **Assessments.** Former § 38.1-482.23 has been amended so that Association members will be charged a floating rate for assessments due but not paid. (38.2-1705)
3. **Detection and Prevention of Insolvencies.** Paragraph 4 of former § 38.1-482.26 has been deleted. It is no longer required that the Association review the IRIS (insurance regulation information system) reports. The remainder of that former section appears in 38.2-1708.
4. **Additional Funds Paid To The Association.** A new article has been added to this chapter for the establishment of a safety fund for the Association. The article gives guidance to the Commission in administering § 38.2-225. Additional provisions are included on the priority, use, and repayment of funds not derived from assessments. Of particular significance is the Commission's authority to direct funds derived from penalties to the safety fund. The establishment of the safety fund should allow the Association to handle insolvencies, particularly small insolvencies, more expediently. (Article 2)

SUBTITLE III - INSURANCE AGENTS

Chapter 18. Insurance Agents.

1. **Licensing Requirements Extended.** Additional requirements of the agents licensing chapter will apply to sales representatives for health maintenance organizations and Blue Cross and Blue Shield plans, cooperative nonprofit life benefit company agents, burial society agents, mutual assessment property and casualty agents, and mutual assessment life and health agents to assure that all agents have a minimum degree of competency.
 - a. Unless licensed as life and health agents, new sales representatives for health maintenance organizations and Blue Cross and Blue Shield plans will be licensed as health agents which will require them to take a 25-hour study course and pass an examination. (38.2-1800 and 38.2-1816). An applicant who is a CLU is exempt from the education and exam requirements for a life and health insurance license or a health license. (38.2-1817)
 - b. Cooperative nonprofit life benefit company agents and burial agents will be subject to full life and health agent licensure requirements but the Commission will have the authority to waive these requirements. (38.2-1815)

more complex types of property and casualty insurance such as workers' compensation, fidelity, surety, credit, legal services, mortgage guaranty, motor vehicle and aircraft insurance. (38.2-1814 and 38.2-2525)

- d. Mutual assessment life and health insurance agents will be required to meet education and examination requirements if they sell more complex types of life and health insurance such as credit life insurance, variable life insurance, credit accident and sickness insurance, Medicare supplemental insurance, and annuities. (38.2-1815 and 38.2-3919)
2. **Power of Commission to Investigate Affairs of Person Engaged in Insurance Business.** Former § 38.1-327.9 that gave the Commission authority to investigate into the affairs of any person engaged in or alleged to be engaged in the insurance business in Virginia has been amended by specifying that business affairs may be investigated to determine if there has been a violation of this title. (38.2-1809)
 3. **Agent Applicants Moving to Virginia from Another State.** Language has been added to former §§ 38.1-327.19 and 38.1-327.29 to provide that an applicant for an agent's license who has moved into Virginia from another state may be exempt from education and examination requirements under certain circumstances if that other state grants the same exemption to a former Virginia agent. (both former sections have been merged into 38.2-1818)
 4. **Property and Casualty and Life and Health Agents.** Former Articles 2 and 3 are being merged into one article that applies to both Property and Casualty Agents and Life and Health Agents.
 - a. Former § 38.1-327.24 has been moved to § 38.2-1815.
 - b. Former § 38.1-327.25 has been deleted and § 38.2-1817 will apply.
 - c. Former § 38.1-327.28 has been deleted and § 38.2-1818 will apply.
 - d. Former § 38.1-327.29 has been deleted and § 38.2-1819 will apply.
 - e. Former § 38.1-327.30 has been deleted and § 38.2-1820 will apply.
 - f. Former § 38.1-327.31 has been deleted and § 38.2-1821 will apply.
 5. **Change of Address, Name.** Former § 38.1-327.37 has been amended to delete "office address". Residence is used elsewhere in the Code. (38.2-1826)
 6. **Temporary License.** Former § 38.1-327.42 has been amended so that a child of the agent is now eligible to receive a temporary license upon the death of the agent or inability of the agent to act because of a sickness, injury or mental incapacity. (38.2-1830)

7. **Refusal or Revocation of License.** Conviction of a felony has been added to the list in former § 38.1-327.43 as to what constitutes grounds for refusal to issue a license and for revocation of a license. (38.2-1831)
8. **Appointment of Agents.** A new subsection has been added to former § 38.1-327.44:1 providing that appointments are public information and are to be available for public inspection during normal business hours of the Commission, for a reasonable fee. (38.2-1833)
9. **Annual Property and Casualty Consultants License Fee.** The July deadline for paying the annual \$50 fee for a consultant's license provided for in former § 38.1-327.65 has been changed to August 1 for consistency with the collection of appointment fees. (38.2-1840)

SUBTITLE IV - PROPERTY AND CASUALTY INSURANCE

Chapter 19. Regulation of Rates Generally.

1. **Private Pleasure Vessels or Craft.** The exemption provided in former § 38.1-279.31(b)(7) for ocean marine risks as distinguished from inland marine risks has been changed to only provide for an exemption for vessels or craft used primarily in a trade or business. Private pleasure vessels or craft will now be subject to the rule, rate, and policy form requirements of Title 38.2, Chapters 3 and 19. (38.2-1902)
2. **Rate Standards.** The rate standard section (former § 38.1-279.33) has been amended by including a provision that a rate shall not be "unfairly discriminatory" if a different rate is charged for the same coverage and (i) the rate differential is based on sound actuarial principles or (ii) is related to actual or reasonably anticipated experience. (38.2-1904). The provisions relating to the uninsured motorists fund have been deleted because the Title 38.2 amendments in the Uninsured Motorists Fund chapter rendered these provisions inapplicable.
3. **Appeal of Point Charge.** The period provided in former § 38.1-279.33:1 for an appeal of points charged under a safe driver insurance program has been extended from the 15 days from notification of the point charge to 60 days from notification of any resultant premium adjustment. (38.2-1905)
4. **Rate Filings.** A provision has been added to former § 38.1-279.40 which requires the Commission to notify the insurer within 30 days if more information is required to evaluate a rate filing coming within the provisions of this section. If more information is required, the filing shall be deemed to be made when that information is provided. (38.2-1912)
5. **Rate Service Organizations.** The duty of a rate service organization to notify the Commission of problems regarding information submission in former § 38.1-279.41 has been deleted. (38.2-1928)
6. **Agreements for Equitable Apportionment of Insurance.** A new subsection has been added to former § 38.1-279.45 to clarify that the Commission may approve the policy forms and endorsements used by insurers under a residual market facility (such as the Virginia Automobile Insurance Plan). (38.2-1918)

... ~~provision~~ ~~reference~~ ~~to~~ ~~the~~ ~~Criminal~~ ~~Code~~ ~~in~~ ~~former~~ ~~§~~ ~~38.1-279.55~~ ~~has~~ ~~been~~ ~~deleted~~ ~~since~~ ~~a~~ ~~violation~~ ~~of~~ ~~this~~ ~~section~~ ~~does~~ ~~not~~ ~~necessarily~~ ~~constitute~~ ~~perjury~~ ~~as~~ ~~defined~~ ~~in~~ ~~the~~ ~~Criminal~~ ~~Code.~~ (38.2-1928)

Chapter 20. Regulation of Rates for Certain Types of Insurance.

1. **Joint Underwriting and Joint Reinsurance.** A new paragraph has been added to former § 38.1-224 that parallels language contained in a similar section of the Competitive Rating Chapter, making the two chapters more consistent. (38.2-2002)
2. **New Deemer Provision.** A provision which "deems" a rate filing to be in compliance and effective unless the Commission disapproves the rate within 30 days of the filing has been added to former § 38.1-253. Also, the Commission will be obligated to inform a filer within 30 days if the filing does not contain all of the necessary information. (38.2-2006)
3. **Deviations.** The phrase "unfairly discriminatory" has been deleted from subsection B of former § 38.1-255.2 because uniform percentage deviations are required. If the rating system itself is not unfairly discriminatory uniform percentage deviations from that rating system will not be unfairly discriminatory. The word "excessive" has also been deleted because deviations must be downward. (38.2-2009)
4. **Agreements for Equitable Apportionment of Insurance.** A new subsection has been added to former § 38.1-264 to clarify that the Commission may approve the policy forms and endorsements used by insurers under a residual market facility (such as the Virginia Automobile Insurance Plan) (38.2-2015)
5. **Rate Service Organizations.** The duty of rate service organizations to notify the Commission of problems regarding submitted information in former § 38.1-271 has been deleted. (38.2-2021)

Chapter 21. Fire Insurance Policies.

1. **Application of Chapter.** With the addition of a new section (38.2-2100 that limits the scope of the chapter to fire insurance policies, and fire insurance policies in combination with other coverages, the specification of applicability to such policies found in many sections has been deleted.
2. **Standard Insuring Agreement for Fire Insurance Policies.** The standard insuring agreement in former § 38.1-365 has been amended so that policy inception and expiration times are 12:01 AM rather than noon. The standard insuring agreement is now being modified by endorsement to accomplish this change. (38.2-2104)
3. **Mailing of Notice of Cancellation or Refusal To Renew.** The provision in former § 38.1-371.1 has been changed to allow the insurer to retain a single duplicate copy of the cancellation or non-renewal notice where there is a lienholder and two notices have been mailed, if the notices sent to the insured and the lienholder are part of the same form. This provision has also been revised to state that records of cancellation and non-renewal notices must be kept for one year. In addition, an insurer that sends

notice by registered or certified mail must also comply with the requirement to retain a duplicate copy and to endorse it. (38.2-2113)

4. **Termination of Policy.** Former § 38.1-371.2 has been changed to specify that the insurer must give 30 days written notice of cancellation or non-renewal except for non payment, in which case the insurer must give 10 days notice. This provision has also been revised to state that records of cancellation and non-renewal notices must be kept for one year. In addition, anti-discrimination prohibitions of non-renewals based on age, sex, race, residence, marital status, lawful occupation, etc., similar to those included in the liability chapter (now Chapter 22) have been added. (38.2-2114)
5. **Discrimination in Issuance of Fire Insurance.** A new section has been added that prohibits discrimination in the issuance of fire insurance policies based on age, sex, residence, race, creed, color, etc. (38.2-2115)
6. **Required Statement On Owner-Occupied Dwellings.** Former § 38.1-279.49:1 has been revised to make the notice requirement more flexible to meet the differences in the forms and endorsements currently available. (38.2-2118)

Chapter 22. Liability Insurance Policies.

1. **Bankruptcy and Insolvency, Unsatisfied Judgment.** Former § 38.1-380 has been amended so that contracts providing only first party indemnification against liability rather than third party payments are also subject to these required provisions. (38.2-2200)
2. **Required Notices for Medical Expenses and Income Loss Benefits Uninsured/Underinsured Motorists.** The required notices contained in former § 38.1-380.2 A and B have been changed to make them more readable. (38.2-2202)
3. **Liability Insurance on Motor Vehicles.** There were 17 subsections in former § 38.1-381. For improved readability, this section has been reorganized into the following new sections:
 - § 38.2-2204. Subsections (a) through (a2) have become one section entitled "Liability insurance on motor vehicles, aircraft and watercraft; standard provisions; omnibus clause."
 - § 38.2-2205. Subsections (a3) and (a4) have become a new section entitled "Liability insurance on motor vehicles; standard provisions; applicability of other valid and collectible insurance."
 - § 38.2-2206. Subsections (b) through (j) have become a new section entitled "Uninsured motorist insurance coverage."
 - § 38.2-2207. Subsection (i) has become a separate section as this provision is not specifically tied to the other provisions in § 38.1-381.
4. **Cancellation or Non-renewal.** Former § 38.1-381.1 has been amended to provide that a single duplicate copy may be retained by the insurer where the notices sent to the insured and the lienholder are part of the same

form. A change was also made to require these records to be kept for one year. In addition, an insurer that sends a notice by registered or certified mail must also comply with the requirement to retain a duplicate copy as to endorse it. (38.2-2208)

5. **Procedures for Cancellation or Non-renewal.** A provision has been added to former § 38.1-381.5 which requires the insurer to retain for one year a copy of each written manifestation of its willingness to renew. In addition the definition of "policy of automobile insurance" has been expanded to include motorcycles. (38.2-2212).

This change in definition also affects former § 38.1-381.10. An appropriate reduction in rates for persons age fifty-five or older who have completed an approved accident prevention course will have to be filed for motorcycles also. (38.2-2217)

6. **Rate Classifications.** Former § 38.1-381.7 has been revised to require that a rate classification statement be provided upon renewal only if there is a change in the insured's classification. The intent is to reduce the number of required notices. (38.2-2214)

Chapter 25. Mutual Assessment Property and Casualty Insurers.

1. **Minimum Surplus Levels.** Former § 38.1-659 has been rewritten and now provides surplus requirements for the various classes of insurance that are written by county mutuals. The classes of insurance are divided into three groups. The applicable surplus requirement depends on which classes of insurance the county mutual chooses to write. Surplus requirements for group (A) which includes fire, miscellaneous property damage and animal insurance is \$25,000; for group (B) which includes water; burglary; glass boiler; home protection; farmowners and several other classes a surplus of \$100,000 is required if only property coverages are written. Group (C) which requires \$800,000 worth of surplus, includes the more sophisticated lines of insurance such as workers' compensation, fidelity and surety and others. (38.2-2503)
2. **Property Beyond Authorized Territory.** In former § 38.1-661, a county mutual could provide coverage only to those who owned real property in its territory. The changed language in this section will allow a county mutual to provide coverage to residents of its territory. (38.2-2504)
3. **Conversion of Mutual Assessment Property and Casualty Insurers.** A new section was added so that a county mutual may become licensed under the provisions of Title 38.2, Chapter 10 (Organization, Admission and Licensing of Insurers). The county mutual can be licensed pursuant to Chapter 10 even though it does not currently meet the specified requirements. However, the insurer shall submit a plan to the Commission that shows that these requirements will be met within 10 years. (38.2-2507)
4. **Who May Become Members.** The requirement in former § 38.1-659 that a basic fire policy had to be issued prior to writing other classes has been deleted.
5. **Policy Forms to Be Filed.** All county mutuals shall file with the Commission a copy of any policy form and standard endorsement that

insurer intends to use. County mutuals will be exempt from filing requirements of Title 38.2, Chapter 3 (Provisions Relating To Insurance Policies and Contracts) unless the insurer is writing those classes of insurance enumerated in subsection C of § 38.2-2503 where full compliance with Chapter 3 shall be required. Previously, companies were required to file such forms only at the time that they applied for their license. (38.2-2517)

6. **Right to Limit Assessment Liability.** If a county mutual has surplus equal to at least three times its average annual losses and expenses over the last five years or \$800,000, it may limit the assessment liabilities of its members in any one year to an amount not less than one additional current annual assessment (38.2-2520). This is different from the fixed amount of \$300,000 provided for in former § 38.1-683.1.
7. **Agents Licenses Required.** A new section has been added providing that all agents representing county mutuals shall be licensed pursuant to Title 38.2 Chapter 18 (Insurance Agents). However, if the agents licenses are limited to those classes of insurance referred to in subsections A and B of § 38.2-2503, no written examination shall be required. (38.2-2525)
8. **Surplus to Policyholders.** A new section has been added providing that a county mutual may accumulate and use surplus as determined by the board of directors. Any income earned on surplus may be used as the director sees fit. A county mutual will be given until July 1, 1991 to meet the surplus requirements specified in § 38.2-2503. If the insurer is not meeting the surplus requirements of either subsection B or C of § 38.2-2503 on July 1, 1986, and is not currently writing any of those classes, it shall not write any of those classes until the specified surplus requirement is met. (38.2-2526)
9. **Limitation on Single Risk to Be Assumed.** A new section has been added providing that a county mutual shall not insure any single risk excluding reinsurance in an amount exceeding 10% of its surplus to policyholders. A phase-in period is provided until July 1, 1991. The phase-in single risk limit requirements are the current statutory single risk limit requirements that are keyed to insurance in force. (38.2-2527)
10. **Reinsurance.** Former § 38.1-675 has been rewritten so that a county mutual may reinsure the whole or any part of its risks with a solvent insurer licensed in this Commonwealth or in other states having solvency standards at least equal to those of this Commonwealth. The reinsurance shall be ceded without contingent liability on the part of the reinsurer. If the county mutual has surplus in excess of \$800,000, it may accept or assume reinsurance from any licensed property and casualty insurer. (38.2-2528)
11. **Unearned premium reserves required.** A new section has been added in order to strengthen the financial integrity of the county mutuals. These insurers shall be required to have unearned premium reserves. A phase-in period is granted in this section that will require full unearned premium reserves to be met by December 31, 1996. (38.2-2529)

Chapter 26. Home Protection Companies.

1. **License Application Fee.** The license application fee provided for former § 38.1-933 has been increased from \$100 to \$500. (38.2-2603)
2. **Qualification for License.** The provision in former § 38.1-934 that a home protection company have a distinctive name has been deleted. The corporations title already addresses this issue. In addition, a provision that a home protection company must keep adequate, correct and complete books and records of accounts and maintain proper accounting controls has been added. (38.2-2604)
3. **Exemption from Compulsory Associations.** Former § 38.1-948 has been deleted because it was rendered unnecessary by a change to a section in the Property and Casualty Guaranty Association Chapter (see 38.2-1603).

Chapter 27. Basic Property Insurance Inspection and Placement Plan and Joint Underwriting Association.

1. **Establishment of a Residual Market Facility.** The major portions of former §§ 38.1-748 and 38.1-748.1 have been consolidated into a single section under which a residual market entity will be mandated, but its plan of operation and form of organization will be left open. The plan of operation will be subject to Commission approval (38.2-2702). The rules, rate policy forms and endorsements used by the residual market facility shall be subject to the Commission's approval under §38.2-2703. Sections 38.2-2704, 38.2-2705 and 38.2-2706 address some of the other topics previously addressed in §§38.1-748 and 38.1-748.1. In addition, new language has been added to the § 38.2-2702 which specifies the powers of the residual market facility.

Chapter 28. Medical Malpractice Joint Underwriting Association.

1. **Association Activation.** Subsection A, the activation portion of former § 38.1-776, has been revised to make it more general and now provides that the Commission shall have the power to activate a joint underwriting association if it finds that medical malpractice insurance cannot be made reasonably available in the voluntary market for a significant number of any class, type, or group of providers of health care. The provision in subsection B that the Commission report annually to the General Assembly as to whether this chapter should be repealed or whether it should be amended has been deleted. In subsection C, the countersignature requirement of agents has been deleted. Countersignature requirements for agents generally had already been deleted by prior legislation. (38.2-2801)
2. **Assessments.** A new paragraph has been added to former §38.1-776.1 to clarify that any monetary contribution or assessment paid by a member to the association would be refunded before dissolution of the association (38.2-2802). In addition, subsection F of former § 38.1-781 has been amended to clarify that preliminary organizational assessments shall be refunded to members upon dissolution of the association. (38.2-2807)

Chapter 29. Federal Riot Reinsurance Reimbursement Fund.

1. This chapter (originally intended to be former Chapter 19.1) has been deleted because the federal legislation on which it was based is no longer in effect. Chapter 29 is being reserved for future use.

SUBTITLE V. - LIFE INSURANCE AND ACCIDENT AND SICKNESS INSURANCE

Chapter 31. Life Insurance.

1. **Domestic Insurers Prohibited From Insuring Lives and Persons of Residents of Reciprocal States.** The requirement in former § 38.1-433 that the Commission mail insurers a notice specifying reciprocal states has been deleted. (38.2-3102)
2. **Fraudulent Procurement of Policy.** The scope of former § 38.1-434 that provided for penalties for any person who knowingly secures or causes to be secured a life insurance policy on a person who is not insurable by means of misrepresentations or false or fraudulent statements has been expanded to include "attempts to secure". In addition, an agent who violates this section is now subject to license revocation under § 38.2-1831 as well as the general title-wide penalties section. (38.2-3103)
3. **Designation of Testamentary Trustee as Beneficiary.** Former §§ 38.1-408.1 and 38.1-442.1 have been combined into a new section because of the overlap of the sections. (38.2-3112)
4. **Readability Standards.** A new section has been added to provide a right to impose a readability requirement for life insurance and annuities similar to the accident and sickness readability requirement, former §38.1-354.1 which is now § 38.2-3404. Policy form is defined to include individual life policies, plans, agreements and annuity contracts; fraternal benefit policies, certificates or contracts; group life policies, contracts, plans or agreements issued to a group with 10 or fewer members and group certificates. (38.2-3116)
5. **Standards for Certain Policies.** A new section has been added to give the Commission authority to establish standards for variable life insurance, universal life insurance or similar types of life insurance policies and annuities. The Commission may prescribe the method of identification of policies and contracts based upon coverage provided. The Commission may also issue rules and regulations that specify prohibited policies or policy provisions which are unjust, unfair or unfairly discriminatory to the policyowner, beneficiary or other person insured under the policy. (38.2-3117)

Chapter 33. Life Insurance Policies.

1. **Grace Period.** The grace period in former § 38.1-392 was changed from one month to thirty-one days for consistency with the grace periods for other types of policies. Also, the provision for deducting overdue premiums from settlements has been limited to earned overdue premiums through the month of death. (38.2-3303)

2. **Policyowner.** The terms "insured", "policyholder" and "policyowner", which were used interchangeably in the Title 38.1 version of this article, have been changed to "policyowner". (38.2-3307 and 38.2-3308)
3. **Reinstatement.** Former § 38.1-400 has been changed to provide that interest on policy loans must be paid at the rate set forth in the policy rather than a rate not exceeding six percent in order to eliminate inconsistencies between this former section and former § 38.1-397.1, now § 38.2-3308. (38.2-3311)
4. **Title.** Former § 38.1-403 has been amended so that a title will not be required on the back of policies. (38.2-3314)
5. **Variations for Certain Forms of Policies.** Reference to flexible premium policies has been added to former § 38.1-404, which states that the requirements of §§ 38.2-3300 through 38.2-3314 that are not applicable to single premium, nonparticipating, term, variable or flexible premium life policies shall, as approved by the Commission, be modified or not incorporated in those policies. (38.2-3315)
6. **Group Life Insurance Requirements Liberalized.** Instead of specifying the kinds and sizes of groups that may purchase group life insurance, the new group life insurance article will allow any group of two or more people to buy group life insurance so long as the plan precludes individual selection of the amount of life insurance. The same requirements will exist for all groups with additional requirements for burial and creditor groups (Article 2)
7. **Group Requirements.** Former § 38.1-480 has been modified and now sets forth four requirements for group life policies. All members eligible for group coverage shall be members of the group or all of any policy class or classes of the group. An insurer may exclude or limit coverage on a person whose individual insurability is not satisfactory to the insurer. A policy must cover at least two persons (other than spouses or minor children) at issue date and each policy anniversary date, and the amount of insurance must be based on some plan that precludes individual selection. The employer or labor union cannot be the beneficiary of the group life policy (38.2-3320)
8. **Trustee Groups.** A new section has been added to allow one or more groups to be insured under one policy issued to a trustee. (38.2-3322)
9. **Increased Coverage Amounts for Spouses and Dependents.** Life insurance coverage for family members as provided for in former § 38.1-472.1 was limited to the lesser of 50% of the insurance on the life of the insured employee or \$10,000 for a spouse, \$5,000 for family members age 6 months and over and \$1,000 for family members under 6 months. Limits for spouse and dependent coverage are now increased so that coverage for spouses and dependents may equal coverage for the insured group member. Any type of group except a creditor group may now extend coverage to spouses or dependent children. (38.2-3323)
10. **Payment of Benefits.** The \$500 limit in former § 38.1-427.1 with respect to the amount an insurer could pay from the proceeds to any person

appearing equitably entitled because of having incurred the funeral or last illness expenses has been increased to \$2,000. (38.2-3330)

11. **Right to Individual Policy.** The \$2,000 limit in former § 38.1-428.2 with respect to the amount of the individual policy to which certain terminate group policyowners are entitled has been increased to \$10,000. (38.2-3333)
12. **Provisions Prohibited.** A new section listing prohibited policy provision has been added. The prohibited provisions include (1) limiting the time an action at law or equity can begin to less than one year after the cause of action or (2) make the agent soliciting the insurance the agent of the person insured or making the acts or representations of the agent binding on the person insured. These provisions were part of former § 38.1-401 which previously applied primarily to individual policies. (38.2-3338)
13. **Definition of Industrial Life Insurance.** The reference to "weekly premium policy" in former § 38.1-409 has been deleted because companies now sell weekly premium ordinary policies. (38.2-3340)

Chapter 34. Provisions Relating To Accident and Sickness Insurance Policies.

1. **Certification to Accompany Application.** Former § 38.1-348.2 has been expanded to require a certification regarding the effect of false statements in applications for group policy certificates where individual underwriting is done. In addition, the section has been changed to require that the certification be part of the application. A sentence has been added to provide flexibility for direct response and guaranteed issue policies. (38.2-3402)
2. **Fraudulent Procurement.** Former § 38.1-348.3 was broadened to include "attempt to secure" in connection with the prohibition against securing an individual accident and sickness policy on an uninsurable person by misrepresentations, false or fraudulent statements. In addition, an agent who violates this section is now subject to license revocation as well as the general penalties section. (38.2-3403)
3. **Optional Coverage for Obstetrical Services.** Coverage for obstetrical services includes reimbursement for services by a physician based on charges for the services determined in the same manner in which charges are developed for other surgical procedures. The reference to "usual, customary and reasonable" found in former § 38.1-348.9 was deleted so these services can be reimbursed on the basis of the same formula that is used for any other procedures. (38.2-3414)

Chapter 35. Accident and Sickness Insurance Policies.

1. **Notice To Be Printed On Policy; Return of Policy To Insurer.** Former § 38.1-348.4 has been changed to require that the notice regarding claims not being paid because the application is inaccurate, and the ten day free look be printed on the policy instead of allowing an option to attach the notice to the policy. Also, a sentence has been added to provide flexibility if the notice is inapplicable such as in the case of guaranteed issue policies. Also, this section has been changed to provide that if a policy is returned

during the ten day free look period the policy is voided from inception. (38.2-3502)

2. **Required Provisions.** The older NAIC model provisions in former §§ 38.1-349 and 38.1-350 have been replaced by the NAIC model simplified policy provisions but the entire contract, time limit on certain defenses, preexisting conditions, and reinstatement, notice of claim and proof of loss provisions have been modified. (38.2-3503 and 38.2-3504). In addition, the five day requirement for delivering or mailing a written notice not to renew has been changed to the same amount of time as the grace period. A similar change has been made to the optional cancellation provision. Also, the \$1,000 amount limitation has been raised to \$2,000 in the optional facility of payment provision, item (9) of former §38.1-349. (38.2-3503)
3. **Article 3. Group Accident and Sickness Insurance Policies.** The former Virginia Code had no standard policy provision requirements for group accident and sickness insurance. This new article essentially adopts the NAIC Health Insurance Standard Provisions Model Act. Some changes were made for clarity, consistent with the changes for the standard group life insurance policy provisions. This new article has similar requirements for the types of groups as proposed in the Group Life Insurance Article. The article requires standard policy provisions and specifies that a policy may be issued to any group of two or more people so long as the plan precludes individual selection of the amount of insurance.
4. **Effective Date For Industrial Sick Benefit Insurance.** A new section was added that prohibits the sale of any new industrial sick benefit insurance policies after June 30, 1987. (38.2-3550)

Chapter 36. Medicare Supplement Policies:

1. **Free Look Notice Required.** The free look notice must now be printed on the policy instead of "printed on or attached to" the policy as provided for in former § 38.1-362.13. Consistent with the changes in other free look provisions, the provision has been changed to provide that if the policy is returned during the free look period, there is no coverage. (38.2-3604)

Chapter 37. Credit Life Insurance and Credit Accident and Sickness Insurance.

1. **Policy Provisions.** A requirement has been added to former § 38.1-482.6 for the age of the debtor to be included in the policy or certificate. In addition, a requirement was added that if a policy or certificate does not provide benefits or coverage for the entire term of the debt, a statement of the limited nature of the insurance must be printed in contrasting color ink in 12-point type. (38.2-3707)
2. **Prohibited Policy Provisions.** References to prohibited policy provisions in former § 38.1-482.6 have been made into a separate section and amended so that no individual or group credit life insurance or credit accident and sickness insurance application forms shall contain a question of general good health without questions concerning the applicant's health history or medical treatment history. (38.2-3708)

Chapter 38. Cooperative Nonprofit Life Benefit Companies.

1. **Annual License Fee.** Former § 38.1-500 has been deleted to eliminate the annual license fee because Chapter 38 companies pay a premium tax.
2. **What Laws Applicable.** The language of former § 38.1-502 has been stricken and language has been substituted to clearly state that Chapter 38 companies must comply with the general insurance laws unless this chapter contains a provision to the contrary. (38.2-3804). The change in this section made the deletion of some former sections possible including §§ 38.1-501, 38.1-509, 38.1-513, and 38.1-518.

Chapter 40. Burial Societies.

1. **What Laws Applicable.** The language of former § 38.1-554 has been stricken and language has been substituted to clearly state that Chapter 40 companies must comply with the general insurance laws unless this chapter contains a provision to the contrary. (38.2-4004). The change in this section made the deletion of some former sections possible including §§ 38.1-557, 38.1-567, and 38.1-568.
2. **Fidelity Bond Required.** The bond requirements in former § 38.1-558 have been increased. The bond shall not be less than \$10,000 or more than \$100,000. (38.2-4008)
3. **Beneficiaries.** Former § 38.1-561 has been amended so that the insurable interest requirements applicable to other life insurance policies will apply to Chapter 40 policies and that if a beneficiary is not living or not allowable, any proceeds will be payable to the member's estate. (38.2-4019)
4. **When Certificate Invalid.** Another criterion has been added to former § 38.1-562 before a certificate can be considered invalid. In addition to the existing four requirements, if health questions were not asked on the application, the certificate could be declared invalid. (38.2-4020)

Chapter 41. Fraternal Benefit Societies.

1. **Overall Reorganization.** This chapter has been reorganized and rewritten and is generally consistent with the Model Fraternal Code approved by the National Fraternal Congress of America and adopted by the Congress in October, 1983.
2. **Purposes and Powers.** Language has been added to former § 38.1-638.36 to indicate that fraternal societies may have subsidiaries or affiliated organizations which are operated in furtherance of the purposes of the society to benefit members and their beneficiaries. (38.2-4104)
3. **Bond Requirement.** The bond requirement in former § 38.1-638.15 was increased from \$5,000 to a minimum of \$50,000 and to a maximum of \$200,000. (38.2-4109)

4. **Benefits.** Fraternal now have the authority to apply to provide benefit authorized for life insurance companies in the future, which are not inconsistent with the fraternal chapter. (38.2-4116)
5. **Beneficiaries.** The amount of funeral benefits provided for in former 38.638.32 that are payable to a person who incurs the burial expenses for member has been increased to \$2,000. (38.2-4117)
6. **Investments.** Fraternal are now governed by Title 38.2 Chapter 1: Article 5 (Insurance Holding Companies) and Chapter 14 (Investment when acquiring subsidiary corporations. (38.2-4121 and 38.2-4123)
7. **Funds.** A new subsection has been added to former § 38.1-638.42 providing the authority of a fraternal to apply to the Commission to establish separate accounts and issue variable contracts. (38.2-4122)

SUBTITLE VI - SERVICES PLANS

Chapter 42. Health Services Plans.

1. **Dental and Optometric Services.** A new section has been added to provide that dental services and optometric services may be provided by either subscription contract or endorsement in a plan. (38.2-4205)
2. **Additional Requirements Applicable.** Appropriate provisions applicable to insurance companies will be applicable to Blue Cross and Blue Shield plan including many of the general provisions (Chapter 2), Unfair Trade Practices (Chapter 5), Privacy Act (Chapter 6), and certain financial provisions such as mergers (Chapter 10, Article 3) and holding companies (Chapter 13, Article 5). (38.2-4214)
3. **Free Look Provision for Medicare Supplement Contracts.** The ten day free look provision for Medicare supplement contracts in former § 38.1-818 has been expanded to cover all individual subscriber contracts by deleting that section and making former §38.1-348.4 (now § 38.2-3502) applicable by reference in § 38.2-4214. Medicaid Supplement contracts must not contain a 30-day free look pursuant to § 38.2-3604, applicable by reference in § 38.2-4214.
4. **Interplan Arrangement.** Former § 38.1-823 has been expanded to prohibit corporation from entering into a contract to acquire control of any person or enter into any material transaction if that contract or transaction would jeopardize the interests of the corporation's subscribers as determined by the Commission. (38.2-4220)
5. **Licensing.** A \$500 nonrefundable application fee will be required instead of the \$50 license fee provided for in former § 38.1-825. License renewal fees provided for in former § 38.1-826 have been eliminated because substantial maintenance fees are paid. (38.2-4222)
6. **Licensing of Agents.** Former § 38.1-827 has been amended so that unless licensed as life and health agents, new sales representatives for Blue Cross and Blue Shield plans will be licensed as health agents which will require them to take a 25-hour study course and pass an examination. Salary

officers of the home office are exempt from the licensure requirements (38.2-4224)

7. **Corporate Restrictions.** A provision has been added to former § 38.1-4 providing for health services nonstock corporations or insurance holding companies controlling health services nonstock corporations to acquire subsidiaries or affiliates of similar or related business, subject to Commission approval. In determining whether a proposed acquisition is in the best interest of the nonstock corporation, its subscribers and the public, the Commission shall consider whether the acquisition will have an adverse financial impact on the nonstock corporation, the extent to which the business is similar or related, and the competitive environments facing the nonstock corporation or holding company at the time of the acquisition. (38.2-4225)
8. **Reinsurance.** A new section has been added to allow a nonstock corporation licensed under this chapter to cede risks. (38.2-4229)

Chapter 43. Health Maintenance Organizations.

1. **Issuance of License; Fee.** The \$100 application fee provided for in former § 38.1-883 has been increased to \$500 which is consistent with the change made to all services plans. In addition, the 90-day time limit for issuing a license to an HMO provided for in former § 38.1-865 has been deleted. (38.2-4302)
2. **Evidence of Coverage and Charges for Health Care Services.** Form § 38.1-869 sets forth requirements for filing forms and schedules and charges. "Filings" has been defined to mean actual receipt by the Commission and a thirty day extension is now allowed for the review period for the filing of forms in order to be consistent with other form filing sections. Language has also been added which requires the HMO to provide a list of its providers and its service area on the evidence of coverage if this information has not been given at the time of enrollment and to advise its subscribers of their right to convert coverage to an individual contract. (38.2-4306)
3. **Annual Statement.** Language has been added to former § 38.1-870 that provides for an extension of time for filing annual reports. (38.2-4307)
4. **Complaint System.** A provision has been added to former § 38.1-871 requiring the complaint record to be maintained "for the period prescribed by § 38.2-511" (formerly § 38.1-82.10). (38.2-4308)
5. **Prohibited Practices.** Former § 38.1-876 has been amended to include a prohibition of sexual discrimination in the selection of health care providers. (38.2-4312)
6. **Licensing of Agents.** Former § 38.1-877 has been amended so that unless licensed as life and health agents, new sales representatives for HMOs will be licensed as health agents which will require them to take a 25-hour study course and pass an examination selling HMO contracts to be licensed as health agents or life and health agents. This is consistent with the

change made in Chapter 42. Salaried officers of the home office are exempt from the licensure requirement. (38.2-4313)

7. **Other Applicable Laws.** Former § 38.1-887 has been amended to add references to the Privacy Act, the uniform penalties section, the new rules and regulations section, the Insurance Agents Chapter and the Unfair Trade Practices Act. (38.2-4319)

Chapter 44. Legal Services Plans.

1. **Application of Certain Provisions.** Appropriate provisions applicable to insurance companies have been made applicable to legal services plans including many of the general provisions (Chapter 2), Unfair Trade Practices (Chapter 5), Privacy Act (Chapter 6), and Insurance Agents (Chapter 18). (38.2-4408)
2. **Issuance of License; Fees.** The \$100 application fee provided for in former § 38.1-802 has been increased to \$500 which is consistent with the changes made to all service plans. License renewal fees provided for in former § 38.1-803 have been eliminated because substantial maintenance fees are paid. (38.2-4413)
3. **Licensing of Agents.** The requirement in former § 38.1-804 that only those persons soliciting subscription contracts outside the principal office of a plan must be licensed has been changed to require that all persons who solicit subscription contracts must be licensed as legal services agents. Salaried officers of the home office are exempt from the licensure requirement. (38.2-4415)

Chapter 45. Dental or Optometric Services Plans.

1. **Application of Certain Provisions.** Appropriate provisions applicable to insurance companies have been made applicable to dental or optometric services plans including many of the general provisions (Chapter 2), Unfair Trade Practices (Chapter 5), Privacy Act (Chapter 6), and Insurance Agents (Chapter 18). (38.2-4509)
2. **Issuance of License; Fees.** The \$100 application fee provided for in former § 38.1-906 has been increased to \$500 which is consistent with the changes made to all service plans. License renewal fees provided for in former § 38.1-907 have been eliminated because substantial maintenance fees are paid. (38.2-4517)
3. **Licensing of Agents.** The requirement in former § 38.1-908 that only those persons soliciting subscription contracts outside the principal office of a plan must be licensed has been changed to require that all persons who solicit subscription contracts must be licensed. Home office salaried officers of the corporation are exempt from the licensure requirement. (38.2-4510)

SUBTITLE VII - OTHER

Chapter 47. Insurance Premium Finance Companies.

1. **License Required; Fee.** The application fee has been increased from the \$200 provided for in former § 38.1-736 to a \$500 non-refundable fee as this is consistent with the fees paid by other companies. (38.2-4701)
2. **Criteria Used When Issuing a License.** Item 4 of former § 38.1-737 has been amended by changing "liquid assets" to "working capital" and by deleting language which allows the Commission to look only at business conducted in Virginia instead of the total operation. The item now reads "... that the applicant has assets equal to or greater than its liabilities and has working capital sufficient for the operation of its business." (38.2-4702)
3. **Suspension, Revocation or Failure to Renew License.** Failure to comply with an order of the Commission has been added to former § 38.1-739 as grounds for suspension, revocation or refusal of an insurance premium finance company's license. (38.2-4704)
4. **Bad Check Charge.** The \$5.00 maximum amount that can be charged for a returned check as provided for in former § 38.1-740.2 has been increased to \$15.00. (38.2-4706)
5. **Penalty For Engaging in Business Without a License.** Former § 38.1-744, penalty section, has been retained because of its unique nature, and the maximum daily fine has been raised from \$50 to \$100. (38.2-4710)

Chapter 48. Surplus Lines.

1. **Accepting and Placing Surplus Lines Business.** An amendment to former § 38.1-327.51 clarifies Bureau policy that any business referred to a surplus lines broker must come from a licensed P&C agent and that surplus lines brokers may only compensate licensed P&C agents for referral business. (38.2-4805)
2. **Affidavits That Insurance Is Unobtainable From Licensed Insurer Required.** An amendment was added to former § 38.1-327.52 that clarifies that the Commission is to prescribe the combined affidavit form. This will allow for the inclusion of information such as declining admitted insurer underwriter and line of insurance necessary for the Commission to monitor compliance with the law. In addition, a provision was added which will require the affidavit to show that the insured has been given the notice required under subsection B prior to the placement of insurance. However, if coverage must be placed and become effective within twenty-four hours after referral to the broker, the notice may be given promptly following such placement. (38.2-4806)

The concept of a good faith search is defined differently for broker originated business and referral business. For broker originated business the concept of a good faith search with three unaffiliated authorized insurers is defined as requiring that the three declinations come from insurers authorized to write such business. The term authorized is defined

to mean that a company is licensed to write such business and has complied with the applicable filing requirements of Title 38.2, Chapter (Regulation of Rates Generally). The purpose of these changes is provide that declining insurers must be able to write the insurance coverage sought. For business that is referred by property and casualty agents the requirements under present law are retained.

Under subsection C of § 38.2-4806 commercial insureds, subject to certain conditions, may waive the requirement of a diligent search and have the surplus lines broker place the business without obtaining a declination from three licensed insurers under this new subsection.

3. **Licensees To Keep Records.** A new subsection was added to former § 38.1-327.53 that requires records of each policy to be kept for at least 5 years. (38.2-4807)
4. **Effect of Payment To Surplus Lines Brokers.** A new section provides the payment to a surplus lines broker shall be deemed to be payment to the insurer. (38.2-4808)
5. **Taxation of Surplus Lines Brokers.** Amendments to former § 38.1-327.5 broaden the Bureau's scope of authority with surplus lines brokers who are delinquent in paying the assessment or premium tax. Changes include the following: (a) The Bureau's authority to deal with brokers who are delinquent in paying premium taxes has been broadened by reference to the penalty provision in Title 58.1; (b) Brokers whose tax liability is expected to exceed \$1500 will be required to make quarterly tax payments; (c) Brokers will be responsible for taxes and assessments collected from insureds in a fiduciary relationship with the Commonwealth of Virginia; (d) Willful violations of the premium tax or assessment laws will be a Class 1 misdemeanor; and (e) Under the provisions of Title 38.2 Chapter 1 (Reports, Reserves and Examinations), surplus lines brokers who knowingly or willfully file false or fraudulent statements or reports will be subject to conviction of a Class 5 felony.
6. **Annual Statements.** An amendment to former § 38.1-327.56 gives the Commission discretionary authority to extend by two months the period within which annual statements must be filed. (38.2-4811)

Title-wide Changes. The requirement of an oath has been deleted in several sections to eliminate the technical defense that no oath was administered in the event that inaccurate reports are filed. The sections are 38.2-1024, 38.2-1305, 38.2-1305, 38.2-2511, 38.2-2604, 38.2-4129, 38.2-4134, and 38.2-4807.

TITLE 38.2

Effective July 1, 1986

(Reorganization of the Insurance Code)

Subtitle I

General Provisions to Title 38.2

- Chapter 1** **General Provisions**
(38.1 source: Chapter 1, Articles 1, 2, and 3)
- Chapter 2** **Provisions of a General Nature**
(38.1 source: Chapter 1, Article 4)
- Chapter 3** **Provisions Relating to Insurance Policies and Contracts**
(38.1 source: Chapter 8, Article 1)
- Chapter 4** **Assessment For Administration of Insurance Laws and Declarations
of Estimated Assessments By Insurers**
(38.1 source: Chapter 1, Articles 5 and 5.1)
- Chapter 5** **Unfair Trade Practices**
(38.1 source: Chapter 1, Article 6)
- Chapter 6** **Insurance Information and Privacy Protection**
(38.1 source: Chapter 1, Article 6.1)
- Chapter 7** **Antitrust Provisions**
(38.1 source: Chapter 1, Article 7)
- Chapter 8** **Service of Process**
(38.1 source: Chapter 1, Articles 8 and 9)
- Chapter 9** **Transition Provisions**
(38.1 source: Chapter 1, Article 4.1)

Subtitle II

Financial Regulations

- Chapter 10** **Organization, Admission and Licensing of Insurers**
(38.1 source: Chapter 2, Chapter 9, Article 7, and Chapter 30)
- Chapter 11** **Captive Insurers**
(38.1 source: Chapter 28)
- Chapter 12** **Reciprocal Insurance**
(38.1 source: Chapter 16)
- Chapter 13** **Reports, Reserves and Examinations; Insurance Holding Companies**
(38.1 source: Chapter 4)

- Chapter 14** **Investments**
(38.1 source: Chapter 5.1)
- Chapter 15** **Rehabilitation and Liquidation of Insurers**
(38.1 source: Chapter 3)
- Chapter 16** **Virginia Property and Casualty Insurance Guaranty Association**
(38.1 source: Chapter 20)
- Chapter 17** **Virginia Life, Accident and Sickness Insurance Guaranty Association**
(38.1 source: Chapter 9, Article 5.2)

Subtitle III
Insurance Agents

- Chapter 18** **Insurance Agents**
(38.1 source: Chapter 7.1, Articles 1 - 4, 6)

Subtitle IV
Property and Casualty Insurance

- Chapter 19** **Regulation of Rates Generally**
(38.1 sources: Chapter 6.2)
- Chapter 20** **Regulation of Rates for Certain Types of Insurance**
(38.1 source: Chapter 6)
- Chapter 21** **Fire Insurance Policies**
(38.1 source: Chapter 8, Article 3)
- Chapter 22** **Liability Insurance Policies**
(38.1 sources: Chapter 8, Article 4)
- Chapter 23** **Legal Services Insurance**
(38.1 source: Chapter 8, Article 4.1)
- Chapter 24** **Fidelity and Surety Insurance**
(38.1 source: Chapter 14)
- Chapter 25** **Mutual Assessment Property and Casualty Insurers**
(38.1 source: Chapter 15)
- Chapter 26** **Home Protection Companies**
(38.1 source: Chapter 29)
- Chapter 27** **Basic Property Insurance Residual Market Facility and
Joint Underwriting Association**
(38.1 source: Chapter 19)

- Chapter 28** Medical Malpractice Joint Underwriting Association
(38.1 source: Chapter 21)
- Chapter 29** [Reserved]
- Chapter 30** Uninsured Motorists Fund
(38.1 source: Chapter 8, Article 3.1)

Subtitle V

Life Insurance and Accident and Sickness Insurance

- Chapter 31** Life Insurance
- Article 1** General Provisions
(38.1 source: Chapter 9, Article 1)
- Article 2** Proceeds of Certain Policies
(38.1 source: Chapter 9, Article 2)
- Article 3** Reserves
(38.1 source: Chapter 9, Article 3)
- Chapter 32** Standard Nonforfeiture Provisions for Life Insurance
(38.1 source: Chapter 9, Article 4)
- Chapter 33** Life Insurance Policies
- Article 1** Life Insurance Policies; Annuities
(38.1 source: Chapter 8, Article 5)
- Article 2** Group Life Insurance Policies
(38.1 source: Chapter 9, Article 5,
Chapter 8, Article 7)
- Article 3** Industrial Life Insurance Policies
(38.1 source: Chapter 8, Article 6)
- Chapter 34** Provisions Relating to Accident and Sickness Insurance
- Article 1** General Provisions
(38.1 source: Chapter 8, Article 2)
- Article 2** Mandated Benefits
(38.1 source: Chapter 8, Article 2)
- Article 3** Jurisdiction Over Providers of Health Care Services
(38.1 source: Chapter 1, Article 4.2)
- Chapter 35** Accident and Sickness Insurance Policies
- Article 1** Individual Accident and Sickness Insurance Policies
(38.1 source: Chapter 8, Article 2)

- Article 2 Individual Accident and Sickness Insurance Minimum Standards Act
(38.1 source: Chapter 8, Article 2.3)
- Article 3 Group Accident and Sickness Insurance Policies
(38.1 source: new sections)
- Article 4 Industrial Sick Benefit Insurance
(38.1 source: Chapter 9, Article 6)
- Chapter 36 Medicare Supplement Policies
(38.1 source: Chapter 8, Articles 2.2, 2.3)
- Chapter 37 Credit Life Insurance and Credit Accident and Sickness Insurance
(38.1 source: Chapter 9, Article 5.1)
- Chapter 38 Cooperative Nonprofit Life Benefit Companies
(38.1 source: Chapter 10)
- Chapter 39 Mutual Assessment Life, Accident and Sickness Insurers
(38.1 source: Chapter 11.1)
- Chapter 40 Burial Societies
(38.1 source: Chapter 12)
- Chapter 41 Fraternal Benefit Societies
(38.1 source: Chapter 13.1)

Subtitle VI
Service Plans

- Chapter 42 Health Services Plans
(38.1 source: Chapter 23)
- Chapter 43 Health Maintenance Organizations
(38.1 source: Chapter 26)
- Chapter 44 Legal Services Plans
(38.1 source: Chapter 22)
- Chapter 45 Dental or Optometric Services Plans
(38.1 source: Chapter 27)

Subtitle VII
Other

- Chapter 46 Title Insurance
(38.1 source: Chapter 17)
- Chapter 47 Insurance Premium Finance Companies
(38.1 source: Chapter 18)

Chapter 48

Surplus Lines Insurance Law
(38.1 source: Chapter 7.1, Article 5)

Chapter 49

Continuing Care Provider Registration and Disclosure
(38.1 source: Chapter 31)