

COMMONWEALTH OF VIRGINIA



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STATE CORPORATION COMMISSION BUREAU OF INSURANCE

May 25, 1988

ADMINISTRATIVE LETTER 1988-6

TO: All Insurance Companies, Health Services Plans,
Health Maintenance Organizations, and Other
Interested Parties

RE: Legislation enacted by the 1988 Session of the
General Assembly of Virginia

Attached are summaries of certain statutes enacted or amended and re-enacted by the General Assembly of Virginia during the 1988 Session.

The effective date of these statutes is July 1, 1988 EXCEPT as otherwise indicated in the attachment.

Each organization to which this letter is being sent should review the attachment carefully and see that notice of these laws is directed to the proper persons (including its appointed representatives) to ensure that appropriate action is taken to effect compliance with these new legal requirements. Please note that this document is a summary of legislation and is neither a legal review and interpretation nor a full description of legislative amendments made to insurance-related laws during the 1988 Session. Each organization is responsible for legal review of the statutes pertinent to its operations.

Sincerely yours,

Steven T. Foster
Commissioner of Insurance

STF:bt
Attachment

**Summary of 1988 Insurance Legislation
Commonwealth of Virginia**

(All Bills Effective July 1, 1988 Unless Otherwise Noted)

PROPERTY AND CASUALTY INSURANCE

Senate Bill 27 and House Bill 182

Uninsured motorist insurance/underinsured coverage

These are identical bills.

These bills amend §38.2-2206 (Uninsured motorists coverage) by changing the definition of "underinsured motor vehicle" to allow an injured person to receive compensation from his own uninsured/underinsured motorist coverage in the event that the negligent party's liability coverage is reduced or unavailable due to payment of other claims arising out of the same occurrence.

The bills also set forth an order of priority for payment in the event an injured person is entitled to underinsured motorist coverage under more than one policy.

Senate Bill 165

Insurance policies and contracts

This bill amends Chapter 3 of the Insurance Code (Provisions relating to insurance policies and contracts) by including within the scope of the Chapter policies written to insure private pleasure vessels. The bill requires such policies to be filed for prior approval of the Commission and to comply with other provisions of the Chapter. This change will not affect ocean marine insurance policies written to insure vessels or craft used primarily in a trade or business.

This bill also amends §38.2-317 (Delivery and use of certain policies and endorsements) by requiring an insurer to notify the Commission, prior to the effective date of any filing, if it does not plan to use a filing made on its behalf by a rate service organization. Such notification must be given to the Commission before the effective date of the filing.

Senate Bill 332 and House Bill 736

Commercial Joint Underwriting Association

These are identical bills.

These bills add a new chapter to the Insurance Code (Chapter 29 - Commercial Liability Insurance Joint Underwriting Association) giving the Commission statutory authority to activate a commercial liability insurance joint underwriting association if, after investigation, notice, and hearing, it determines that any line, subclassification or type of commercial liability insurance coverage can no longer be made reasonably available for a significant number of any class, type or group of such risks in the voluntary market or through a market assistance plan. The purpose of the association is to provide markets for commercial liability insurance for persons with eligible risks who are unable to obtain commercial liability insurance coverage, including incidental coverage, through the voluntary market. Commercial liability insurance means those classes defined in §§38.2-117 and 38.2-118 but does not include medical malpractice insurance, nuclear liability, or any risks, lines, or subclassifications that are determined by the Commission to be uninsurable.

Senate Bills 444 and House Bill 561

Limitation of risks/Small Business Administration

These are identical bills.

These bills amend §38.2-2403 (Limitation of liability on risks) pertaining to the limitation of liability exposure for fidelity and surety insurers. The provisions of the bill allow the fidelity and surety insurer to exceed the limit specified in §38.2-208 (Limitation of risks generally) if the risk is guaranteed by the Small Business Administration (SBA) pursuant to the Small Business Investment Act of 1958. The SBA has a bond guarantee program that reduces the risk of bonding companies by guaranteeing the performance of the bond (up to 90% of the loss incurred). The guarantee program encourages bonding companies to issue surety bonds to marginal firms that may not qualify for a surety bond without the backing of the Small Business Administration. This bill allows the bonding company to exceed the single risk limit prescribed by §38.2-208 as long as the risk has the backing of the SBA.

House Bill 95

Aftermarket parts

This bill amends §38.2-510 (Unfair claims settlement practices) with regard to the use of aftermarket parts in auto repairs. The insurer is now required to disclose to the claimant in writing

when an estimate for repairs is based on the use of parts not made by the original manufacturer (aftermarket parts). The disclosure must also specify that such parts are required to be at least equal, in terms of fit, quality and performance, to the original manufacturer parts being replaced.

House Bill 297

Cancellation and non-renewal of automobile insurance

This bill is the result of recommendations made in a report prepared by the Bureau of Insurance of the State Corporation Commission pursuant to 1987 Senate Joint Resolution No. 142 and reported in 1988 Senate Document No. 14.

Changes were made in §38.2-2210 (Warning concerning cancellation to appear on application for motor vehicle liability insurance) requiring that the statutory warning concerning cancellation that appears on any application for the original issuance of any motor vehicle liability insurance policy be in boldface type. The requirement that red type be used has been repealed. Subsection B has been added to require that the insured be permitted to provide an explanation for a previous termination if the insurer asks for information regarding any previous termination.

The bill also amends subsection C of §38.2-2212 (Grounds and procedure for cancellation of or refusal to renew motor vehicle insurance policies) by including the language "solely because of any one or more of the following factors" to be consistent with the language found in §38.2-2213 pertaining to unfair discrimination. Subsection C of §38.2-2212 is also amended to prohibit an insurance company from refusing to renew a private passenger motor vehicle insurance policy solely on the basis of one or more of the following factors:

1. Lack of driving experience or number of years driving experience;
2. Lack of supporting business or lack of the potential for acquiring such business;
3. One or more accidents or violations that occurred more than forty-eight months immediately preceding the upcoming anniversary date;
4. One or more claims submitted under the uninsured motorists coverage of the policy where the uninsured motorist is known or there is physical evidence of contact;
5. A single claim by a single insured submitted under the medical payments or medical expense coverage of the policy due to an accident for which the insured was neither wholly nor partially at fault; or

6. One or more claims submitted under the comprehensive or towing coverages of the policy.

Subdivision 2 of subsection C of §38.2-2212 is amended to add a sentence to allow an insurer to non-renew a policy if a claim submitted is false or fraudulent. Subsection E of §38.2-2212 is amended to specify in the notice of cancellation or non-renewal that the insured's right to a review by the Commissioner entitles the insured to a review of the technical and legal accuracy of the cancellation or non-renewal, but does not give the Commissioner the authority to make underwriting judgments.

House Bill 326

Fire Programs Fund

This bill amends subsection B of §38.2-401 (Fire Programs Fund) which relates to the Fire Programs Fund that is funded by assessments on fire policies and combination policies that contain fire, miscellaneous property, and marine coverages. The amendments add the constructing, improving and expanding of local fire training facilities to the projects that may be paid for by the Fund. The bill also requires that all training at local fire service facilities be conducted by instructors certified and approved according to Department of Fire Programs Regulations and approved by the Virginia Fire Services Board.

House Bill 444

Uninsured motorist coverage/service of process

This bill amends subsection E of §38.2-2206 (Uninsured motorists coverage) by adding a sentence stating that the provisions of §8.01-288 (Process received in time good though neither served nor accepted) are not applicable to this subsection.

Section 8.01-288 of the Civil Remedies and Procedure Code states that, except for certain actions (divorce and annulment), process which has reached the person to whom it is directed within the time prescribed by law is sufficient even though it has not been served or accepted as provided in Chapter 8 of Title 8.01.

House Bill 467

Uninsured motorist coverage/tortfeasor

This bill amends §38.2-2206 (Uninsured motorists coverage) by stating that a liability insurance carrier providing coverage under a policy issued or renewed on or after July 1, 1988, may pay the entire amount of its available coverage without obtaining a release of a claim if the claimant has underinsured insurance coverage in excess of the amount so paid. The bill also requires the insurer of the alleged tortfeasor to notify its insured as

well as the claimant's insurer that it has paid the full amount of its available coverage.

House Bill 471

Notice of cancellation on application

This bill amends §38.2-2210 (Warning concerning cancellation to appear on application for motor vehicle liability insurance) by requiring an insurer to give the warning concerning cancellations to an applicant within 10 days of the application if the applicant is not given a written copy of the application. This provision will apply only if coverage has been bound by the insurer.

House Bill 560

Medical malpractice JUA

This bill amends Chapter 28 of the Insurance Code (Medical Malpractice Joint Underwriting Association) by deleting reference to the group retrospective rating plan, providing instead for a group retrospective premium adjustment. The phrase "temporary contributions" has also been deleted and replaced with the phrase "other assessments... as authorized by this chapter". The bill also eliminates the requirement that retrospective premium refunds to the association go into the stabilization reserve fund.

House Bill 690

Uninsured motorist coverage/self-insured employer

This bill amends §38.2-2206 (Uninsured motorist coverage) to provide that if an employee of a self-insured employer receives a workers' compensation award for injuries resulting from an accident with an uninsured auto, the award shall be offset against any judgement for damages awarded under uninsured motorist coverage for that accident.

House Bill 734 (effective March 20, 1988)

Reporting liability claims

This bill amends §38.2-2228.1 (Certain liability claims to be reported to Commission) by exempting mutual assessment insurers and by allowing the Commission to exempt certain other insurers from the annual reporting requirement pertaining to all personal injury and property damage liability claims made against policies insuring commercial entities. Insurers may be exempt if the Commission determines that the application of the provisions of this section are unnecessary to achieve the purposes of the

section. This bill allows the Commission, for example, to exempt insurers writing only a small amount of liability insurance.

House Bill 735 (effective March 20, 1988)

Reporting commercial liability insurance data

This bill makes technical amendments to H.B. 1235 which was passed last year. This bill amends §38.2-231 (Notice of cancellation, refusal to renew, reduction in coverage or increase in rate of certain liability insurance policies) pertaining to notices of cancellation, non-renewal, reduction in coverage or increase in rates for certain liability policies. It clarifies, in subsection B.2, that the insurer must retain a duplicate copy of a notice of reduction in coverage as well as notice of a rate increase as required by subsection A1 of this section.

This bill also amends §38.2-2003 (Rate filings by insurer) by clarifying that insurers must submit with their rate filings the number of claims unpaid as well as the number of claims paid. This language, when it was originally drafted, inadvertently listed the same requirement twice in paragraphs 5 and 8. This language should be consistent with §38.2-1905.2 (Supplemental report required for certain lines or subclassifications of liability insurance) and should show the number of claims paid as well as the number of claims unpaid.

House Bill 774

Financial Guaranty Insurance

This bill amends §38.2-208 (Limitation of risk). Before being amended, this section provided for specific single risk limits for municipal bond insurance. This bill now provides a specific single risk limit for all other kinds of financial guaranty insurance. The single risk limit is that the insured unpaid principal with respect to obligations for any one entity will not exceed 10% of the insurer's surplus to policyholders. A definition of "financial guaranty insurance" is also included and is based in part on the NAIC Model Act.

The definition of "municipal bond" has been expanded to include issues by non-governmental entities that would be eligible for issuance by governmental entities. This definition has also been revised to include obligations of the governments of the United States and Canada in addition to state or local obligations or Canadian provincial obligations.

The bill also added to the list of what may reduce the amount of insured unpaid principal for the purpose of subsection C, the amount of deposit of (i) a conveyance or mortgage of real property and (ii) the scheduled cash flow from obligations rated in the four highest major rating categories recognized by the Commission if scheduled to be received on or prior to the date of scheduled debt service on the insured obligations.

A provision is also added to allow contingency reserves to be included in the insurer's surplus to policyholders.

House Bill 879

Collision damage waivers

This bill created a new chapter in Title 59.1 (Trade and Commerce) for the regulation of the collision damage waiver portion of the rental agreement between an auto rental agency and the person or organization obtaining the use of a rental motor vehicle.

The bill provides for a written notice indicating that purchase of the collision damage waiver is not mandatory and may be waived. The bill also prohibits any collision damage waiver from containing an exclusion for damages caused by ordinary negligence of the lessee.

LIFE AND HEALTH INSURANCE

Senate Bill 149

Mandated provider list to include chiropractors

This bill amends §38.2-4221 (Services of certain practitioners other than physicians to be covered) of the health services plans chapter which applies to the Blue Cross/Blue Shield Plans. The bill adds "chiropractor" to the list of providers that must be reimbursed for performing services for which they are licensed, if the services are provided for by the subscription contract.

House Bill 304

Life, Accident and Sickness Insurance Guaranty Association

This bill amends §38.2-1700 (Applicability of chapter) relating to the Life, Accident and Sickness Insurance Guaranty Association. This bill clarifies that any contract or group certificate which is not issued to and owned by an individual will not be protected by the Virginia Life, Accident and Sickness Insurance Guaranty Association except to the extent of any annuity benefits guaranteed to an individual by an insurer under such contract or certificate. The result of this bill is that the Guaranty Association will not cover Guaranteed Investment Contracts (GICS) nor Deposit Administration Contracts (DACS).

House Bill 533

Insurable Interest

This bill amends §§38.2-301 (Insurable interest required) and 38.2-302 (Life, accident and sickness insurance application required) to provide that corporate employers have an insurable interest in the life of key employees or other employees who have worked at least 12 consecutive months if the amount of life insurance taken out on the employee is commensurate with the amount of insurance the employer provides to the employee as a benefit. An employer who purchases insurance on the lives of such employees is required to provide each such employee with written notice that the insurance has been purchased.

House Bill 686

Blue Cross/Blue Shield Plans

This bill amends several sections in Chapter 42 of Title 38.2 (Health Services Plans). Section 38.2-4216.1 (Open enrollment) now requires all Blue Cross/Blue Shield open enrollment contracts to be available on a year-round basis. Further, this section has been revised to clearly prohibit any person from indicating that open enrollment contracts are available to individuals who are employees of employers who provide hospitalization or other health coverage to their employees.

Section 38.2-4208 (Nonstock corporation not required to act as agent) was amended to state that the minimum level of contingency reserves shall not exceed 45 days of the anticipated operating expenses and insured claims expense generated from subscription contracts issued by the nonstock corporation, and shall be computed as the Commission requires. The term "subscription contract" was amended in the definition section of the Chapter clarifying that such contracts are written only on a prepaid basis. This means that the reserve requirement will be applicable only to business for which the nonstock corporation is at risk. For example, the reserve requirement shall not apply to income generated from administrative services only (ASO) contracts or other contracts where the nonstock corporation is not at risk.

In addition, §38.2-4222 (Licensing of nonstock corporations) was modified to restrict licensure to plans that deliver prepaid contracts only. Thus if an entity does not issue subscription contracts, they would not be licensed under this chapter.

House Bill 711

Credit life and accident and sickness notice; Conversion, continuation of coverage

This bill amends §38.2-3707 (Policy provisions; disclosure to debtors) to require individual credit life and credit accident and sickness policies to contain a notice that the policy owner has at least 10 days to return the policy to the agent or company with a written request for cancellation and to receive a full refund of premium. In this case, the policy will be void from inception.

The bill also amends §§38.2-3416 (Conversion on termination of eligibility) and 38.2-3541 (Conversion or continuation on termination of eligibility). The conversion or continuation must now be offered even if the group policy is terminated (this had been an exception to the requirement) unless such termination is due to termination of the group policy under circumstances in which the insured person is insurable under other replacement group coverage or health care plan without waiting periods or pre-existing conditions under the replacement coverage or plan.

House Bill 717

Subrogation for medical insurance policies

This bill amends §38.2-3405 (Certain subrogation provisions prohibited) of the accident and sickness insurance chapter which prohibits subrogation of a person's right to recover from a third party to be included as a provision in an accident and sickness policy or subscription contract. The bill amends this section to include contracts that provide for "payment of benefits to or on behalf of persons residing in or employed in this Commonwealth".

INSURANCE AGENTS

House Bill 99 (effective March 3, 1988)

Partial qualifications

This bill amends §§38.2-1824 (Kinds of agents' licenses issued) and 38.2-1834 (Duration of appointment). The bill allows insurance agents who held limited licenses (partial qualifications) as of July 1, 1987 to continue to hold such licenses. This bill modifies provisions passed during the 1987 General Assembly Session which discontinued these partial qualifications. All reference to partial qualifications in the Insurance Code had been eliminated in 1979 but licenses active at that time are still in existence. This bill essentially "grandfathers" such existing qualifications but will not allow new limited licenses to be issued or allow any which lapse or are revoked to be reinstated.

House Bill 215

Public Procurement Act

This bill amends Title 11 (Contracts) by stating that a public body may procure insurance through a licensed agent or broker if a determination is made in advance that competitive negotiation is either not practicable or not fiscally advantageous. The basis for such determination must be documented in writing.

House Bill 258

Licensing of nonresident agents

The bill amends §§38.2-1836 (Licensing nonresident agents) and 38.2-1845 (Licensing nonresident consultants) by eliminating some of the requirements for nonresident licensure that were to be verified by certification from the insurance department of the applicant's state. The bill now requires that the certification verify only that the applicant is licensed or otherwise authorized with that state to solicit, negotiate, procure, effect or consult regarding the classes of insurance for which the license is being sought in Virginia.

The bill also adds a provision that prohibits an applicant for a nonresident Virginia license from obtaining such a license unless the applicant's state of domicile will grant a similar license to a Virginia resident.

House Bill 267

Appointment of agents

The bill amends §38.2-1833 (Appointment of agents) by clarifying that a licensed but unappointed agent may only solicit insurance applications for a company before becoming appointed with that company. The agent may not bind coverage (negotiate, procure, or effect) until appointed by the insurer.

House Bill 733

Title agents

This bill amends §38.2-1814.1 (Title agents) by exempting title agents from the licensing examination requirement if they were authorized title agents on January 1, 1987. Any individual seeking a title agent's license after that date is required to pass the examination prior to becoming licensed. The amendment also eliminates the specific exam criteria from the Insurance Code while retaining an examination requirement.

This bill also repeals the requirement that annual proof of financial responsibility be filed with the Commission.

House Bill 1034

Agent of record

This bill amends §38.2-1801 (Person soliciting insurance deemed agent of insurer), providing that for the purpose of notice of claims or suits the agent or producer of record is deemed to be the agent of the insurer.

WORKERS' COMPENSATION GROUP SELF-INSURANCE ASSOCIATIONS

House Bill 328 (effective March 29, 1988)

Enforcement of joint and several liability of members

This bill amends §65.1-104.2 (Requirements for licensure as group self-insurance association under workers' compensation) by stating that the State Corporation Commission does not have to sue the association first in order for the surety to meet its obligations.

The bill also provides that if a group self-insurance association fails to enforce the rights of the association agreement after reasonable notice from the Commission to the association, the Commission shall have the right independently to enforce on behalf of the association the joint and several liability of its members under the Act and the liability of members for any unpaid contributions and assessments. The amendment further states that the Commission shall be entitled to recover its expenses and attorney's fees.

House Bill 544 (effective April 6, 1988)

Uninsured Employer's Fund

This bill amends §65.1-149 (Awards entered on the Uninsured Employer's Fund under the Workers' Compensation Act) by defining a former member of a group self-insurance association whose license has been terminated by the Commission and whose security deposit with the State Treasurer or surety coverage has been exhausted as an uninsured employer who is not in compliance with §65.1-104.1 (Requirements for licensure as group self-insurance association). This bill was amended to state that for all such uninsured employers, the Attorney General, or her designee, shall enforce the right of subrogation and recoupment as provided in §65.1-150.

SURPLUS LINES

House Bill 268

Refunding overpayment of taxes

This bill is an amendment to §§38.2-4809 (Licensees to pay assessments and license taxes on insurers) and 38.2-4812 (Surplus lines insurers subject to Unlicensed Insurers Process) of the surplus lines chapter. The bill provides a method for refunding overpaid tax to the surplus lines broker. The change makes the taxing provisions of brokers consistent with that of insurers.

The bill also requires that every surplus lines insurer issuing surplus lines coverage under Chapter 48 be subject to all provisions of Title 38.2 Chapter 8, Article 1 for service of process.

House Bill 493

Credit insurance

This bill amends §38.2-4800 (Surplus lines brokers) by adding §38.2-122 (definition of credit insurance) to the classes of insurance which surplus lines brokers may sell. Section 38.2-4806 (Affidavits required) was also amended to include reference to credit insurance.

MISCELLANEOUS

Senate Bill 233 (effective March 20, 1988)

Virginia Birth-Related Neurological Injury Compensation Program

This bill amends §38.2-5019 (Initial assessments) of the Virginia Birth-Related Neurological Injury Compensation Program to provide that physicians and hospitals that are otherwise eligible but did not meet the requirements of §38.2-5001 (Definitions), including paying the required initial assessment and making the agreements with the State Board of Medicine and the Commissioner of Health by January 1, 1988, may join the program by making the agreements and paying an assessment fee by May 15, 1988. The amount of the initial assessment will be prorated for the remainder of 1988.

House Bill 147

Use of rating service

This bill amends §38.2-513 (Favored agent or insurer) of the Unfair Trade Practices Act which relates to the prohibition against requiring the use of a particular insurance company or agent as a condition precedent to the extension of credit. The bill states that the use of the ratings of a nationally recognized rating service shall not be deemed unreasonable provided such ratings are based on reasonable standards uniformly applied. If an insurer, duly licensed in Virginia, does not possess the required rating of a nationally recognized rating service, no person who lends money or extends credit shall refuse to accept from the insurer a certificate of one hundred percent reinsurance issued by another insurer pursuant to §38.2-136 (Reinsurance), which does possess the required rating.

House Bill 176

Notice of contract address on policies

This bill amends §§38.2-300 (Scope of chapter) and 38.2-305 (Contents of policies) of the chapter on Provisions Relating to Insurance Policies and Contracts. The bill requires that a notice accompany each policy or contract. The notice shall advise the insured to contact the agent if a problem with the policy arises. The notice also must identify the appropriate contact addresses and phone numbers of the company's home or regional office issuing the policy for use if additional assistance is needed. The notice is also to include the phone number and address of the Bureau of Insurance for the insured's use in the event he is unable to contact, or obtain satisfaction from, the agent or company. An administrative letter on this bill will follow shortly.

House Bill 195

Security deposits required of insurers

This bill amends §§38.2-1046 (Purpose of deposits), 38.2-1047 (How deposits applied to payment of claims) and 38.2-1048 (Return of deposits) relating to security deposits required of insurers. The amendment outlines the procedure for making a claim against an insolvent or bankrupt insurer's Virginia-exclusive deposit. A claimant need only file a bill in the Circuit Court of the City of Richmond to subject the insurer's deposit to his claim. The Circuit Court will distribute the deposit among Virginia claimants.