

COMMONWEALTH OF VIRGINIA



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STATE CORPORATION COMMISSION
BUREAU OF INSURANCE

June 17, 1991

ADMINISTRATIVE LETTER
1991-11

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

RE: Legislation enacted by the 1991 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 1991 Session.

The effective date of these statutes is July 1, 1991 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 1991 Session. Each organization is responsible for legal review of the statutes pertinent to its operations.

Sincerely yours

A handwritten signature in black ink, appearing to read 'S. T. Foster', with a long horizontal line extending to the right.

Steven T. Foster
Commissioner of Insurance

STF/met
Attachment

(All Bills Effective July 1, 1991 Unless Otherwise Noted)

Life and Health Insurance

House Bill 883

Health Insurance for Adopted Children

This bill amends § 38.2-4319 and adds § 38.2-3411.2 to require that accident and sickness insurance provided to family members under a policy, subscription contract or health care plan be provided, without limitations, to adopted children of an insured, subscriber or plan enrollee from the date a child is placed with such individual for the purpose of adoption. A child placed within 31 days of birth is to be considered a newborn child of the insured, subscriber or plan enrollee as of the date of adoptive or parental placement. The insured has 31 days to notify the company of the adoption of the child if a fee or premium is required for coverage of the child.

House Bill 1384

Investigative Powers of the State Corporation Commission

This bill amends § 38.2-515 to require insurers to file timely responses to requests from the State Corporation Commission for trade practice information. An insurer failing to do so will be subject to the enforcement procedures and penalties available to the Commission under Chapter 2 of Title 38.2.

House Bill 1385 (Senate Bill 847) (Effective April 3, 1991)

Life and Health Insurance for Members of the Armed Forces

These bills add § 38.2-508.1 to prohibit insurers from refusing to issue or refusing to continue life insurance coverage for members of the United States Armed Forces, Reserves or National Guard solely due to their military status or their military duty assignments. This bill also provides that in the event that an individual's or family member's coverage under a group life or group health insurance contract is terminated due to an individual's military status, coverage will be reinstated without additional preexisting condition limitations or other exclusions or limitations upon the individual's return to eligibility status under the policy. The reinstatement provision applies regardless of continuation, renewal, reissue or replacement of the group insurance policy.

House Bill 1798

Medicare Supplement Policies

This bill amends § 38.2-3603 to increase the loss ratio requirement for individual Medicare Supplement insurance policies from sixty percent to sixty-five percent.

House Bill 1877

Interest on Life Insurance Proceeds

This bill amends § 38.2-3115 to exempt certain credit life insurance from this section which establishes the amount of interest to be paid on life insurance proceeds. The exemption is for credit life insurance for which the premium is paid wholly from creditor funds with no identifiable charge to the insured and upon which post-death interest on the indebtedness is waived by the creditor in an amount at least equal to the amount of interest that would otherwise be payable.

House Bill 1896

Notice of Lapse in Life and Health Insurance

This bill amends §§ 38.2-4214 and 38.2-4319 and adds §38.2-232 to require insurers, health services plans and health maintenance organizations that issue policies, contracts or plans of life, credit life, industrial life, variable life, annuity, variable annuity, credit accident and sickness or accident and sickness insurance, to notify the owner of the policy, contract or plan in writing prior to a lapse resulting from the failure of the owner to pay premiums that are due. This bill does not apply to group coverage or where the provider as a general practice provides owners with written notice of premiums due. This bill also does not apply to policies, contracts or plans where the owner has been furnished a written notice separate from the policy that the failure to pay premiums in a timely manner will result in a lapse of coverage.

House Bill 1906

Burial Life Insurance

This bill amends § 54.1-2820 to require that those engaged in the business of offering preneed funeral contracts that use life insurance or annuity contracts as the funding vehicle must utilize life insurance or annuity contracts that adjust the full value annually by a factor equal to the Consumer Price Index, or that the death benefit under the contract be equal to or exceed

the sum of all premiums paid for the contract plus annual interest of at least five percent (compounded annually).

Property and Casualty Insurance

House Bill 727

Medical Payments and Medical Expenses Provisions of Motor Vehicle Insurance

This bill combines Medical Payments coverage (§ 38.2-124) and Medical Expense coverage (§ 38.2-2201) into one coverage called Medical Expense and Loss of Income Benefits. The amended § 38.2-124 now defines medical expense coverage in general terms and the amended § 38.2-2201 contains the specific coverage provisions and the requirement of a mandatory offer of coverage of \$2000 (other limits may be agreed upon). The stacking provision requiring the insurer to pay the maximum limit available for up to four vehicles was not amended and still applies. The Medical Expense notice provision required by § 38.2-2202 was not amended to reflect these changes and will probably have to be amended by the 1992 Session of the Virginia General Assembly.

House Bill 1525

Motor Vehicles Not Used in Occupations, Professions or Business

This bill amends § 38.2-2212 to eliminate the maximum load capacity restriction in the definition of an insured motor vehicle under § 38.2-2212. This bill also deletes the provision in § 38.2-2212 that a policy of motor vehicle insurance as defined in that section does not include any policy insuring more than four motor vehicles.

House Bill 1630 (Effective April 3, 1991)

Suspension of Certain Motor Vehicle Insurance Coverages

This bill adds § 38.2-2205.1 to require insurers to suspend any coverage on a motor vehicle if the named insured so requests due to the vehicle being impounded on a military base (satisfactory evidence of actual impoundment may be required). The insurer may decline to suspend coverage if the impoundment is for a period of less than thirty days. This bill contained an emergency clause and was effective April 3, 1991.

House Bill 1671 (Effective March 20, 1991)

Fire Insurance Policies

This bill adds § 38.2-2114.1 to allow the Commission to exempt insurers from the termination provisions of subsections B and C of § 38.2-2114 and the mailing requirements of §38.2-2113 when the insurer proposes to place all of its policies with an affiliate insurer under common control. An insurer must demonstrate that (i) the replacement policy is underwritten by an affiliate insurer under common control with the petitioning insurer; (ii) the replacement policy is substantially similar to the existing policy; (iii) the premium for the replacement policy is no greater than that of the existing policy; and (iv) the replacement insurer is licensed to do business in the Commonwealth. The replacement insurer must keep a copy of the replacement offer for one year on policies not replaced. The bill contained an emergency clause and was effective March 20, 1991.

House Bill 1672 (Effective March 13, 1991)

Motor Vehicle Insurance Policies

This bill adds § 38.2-2212.1 to allow the Commission to exempt insurers from the termination provisions of subsection E of § 38.2-2112 and the mailing requirements of § 38.2-2208 when the insurer proposes to place all of its policies with an affiliate insurer under common control. The insurer must demonstrate that (i) the replacement policy is underwritten by an affiliate insurer under common control with the petitioning insurer; (ii) the replacement policy is substantially similar to the existing policy; (iii) the premium for the replacement policy is no greater than that of the existing policy; and (iv) the replacement insurer is licensed to do business in the Commonwealth. The replacement insurer must keep a copy of the replacement offer for one year on policies not replaced. The bill contained an emergency clause and was effective March 13, 1991.

Senate Bill 762

Bad Faith Denial of Motor Vehicle Claims

This bill amends § 8.01-66.1 of the Civil Remedies Code by stipulating that if an insurer in bad faith denies or fails to pay to its insured a claim of more than \$1000 in excess of the deductible under a motor vehicle insurance policy, the insurer will be liable to the insured in the amount otherwise due and payable, plus double the interest rate specified by statute. The

insurer will also have to pay reasonable attorney's fees and expenses. The Civil Remedies Code already provides for a penalty for the bad faith settlement of claims of \$1000 or less for insureds and third party claimants.

Senate Bill 787

Disclosure of an Agent's Moratorium

This bill adds § 38.2-613.1 to require agents to disclose the fact that they are not submitting an application for private passenger motor vehicle insurance to an insurer (and instead are proposing to submit an application to the assigned risk plan or are proposing to place the policy with another insurer) solely because the insurer has placed a moratorium against writing new business on the agent. This provision is conditioned upon (i) the applicant otherwise being acceptable to the insurer and (ii) the moratorium resulting in the applicant being charged a higher rate. The existence of the moratorium must be disclosed prior to placement with another insurer or submission to the assigned risk plan.

Senate Bill 870

HEAT Program

This bill adds § 38.2-414 to establish a statewide program to receive and to pay rewards for information leading to the arrest and conviction of persons who commit motor vehicle theft-related crimes in Virginia. The program is to be financed through annual assessments collected from insurers licensed to write motor vehicle insurance coverage in Virginia. The assessments will be equal to one-quarter of one percent of the insurer's total direct gross premium income for automobile physical damage insurance other than collision written in Virginia during the preceding calendar year. The assessments, which are due by March 1 of each year, will be collected by the Commission and placed in a fund known as the HEAT (Help Eliminate Automobile Theft) Fund, which will be administered by the Superintendent of the Department of State Police.

Senate Bill 887

Birth-Related Neurological Injury Compensation Act

This bill amends § 38.2-5020 to waive the annual participating physician assessment for residents in a duly accredited family practice or obstetrics residency training program at a participating hospital. Such residents are to be considered participating physicians in the Virginia Birth-Related

Neurological Injury Compensation Program, but are not required to pay an assessment.

FINANCIAL REGULATION

House Bill 1439

Insurer Investments

This bill adds § 38.2-1411.1 to clarify that securities described in 15 U.S.C. § 77r-1 are subject in the Commonwealth to the limitations prescribed for insurer investments not guaranteed by the full faith and credit of the United States. This new provision distinguishes between securities described in 15 U.S.C. § 77r-1 and the unrestricted § 38.2-1415 investments for which the full faith and credit of the United States is pledged. However, § 38.2-1411.1 enables the State Corporation Commission to permit an insurer to increase its investment in § 77r-1 securities to a maximum of 10 percent of its total admitted assets until July 1, 1992.

House Bill 1448

Conversion of Health Service Plans to Mutual Insurance Companies

This bill adds § 38.2-4229.1 to authorize domestic nonstock corporations to convert to domestic mutual insurers. The nonstock corporation must comply with the surplus requirements for domestic mutual insurers in § 38.2-1030 and the articles of incorporation provisions of § 38.2-1002. The nonstock corporation must comply with § 38.2-316 by filing copies of all policies that the nonstock corporation plans to issue after the conversion at least ninety days prior to the effective date of conversion. All subscription contracts issued and outstanding as of the date of conversion shall remain in force in accordance with their terms until expiration or termination. Any nonstock corporation offering an open enrollment program under § 38.2-4216.1 must continue its open enrollment program after conversion. Any company wanting to discontinue an open enrollment program must give 24 months notice of such action as required by § 38.2-4216.1. The license tax on direct gross premium income for accident and sickness insurance will be three-quarters of one percent as long as the corporation continues to offer open enrollment.

This bill also amends § 38.2-3538 to allow the inclusion of a provision that benefits for health care services may be paid to the provider of those services in group accident and sickness insurance policies.

House Bill 1979

Guaranty Associations

This bill amends §§ 38.2-1611.1 and 38.2-1709 to clarify the law pertaining to tax write-offs of certificates of contribution for the Virginia Property and Casualty Insurance Guaranty Association and the Virginia Life, Accident and Sickness Insurance Guaranty Association. The amendment specifies that the amount amortized is an amount not to exceed 0.05 of 1 percent of an association member's direct gross premium income for the classes of insurance assessed in the account for which the insurer member is assessed.

Senate Bill 554

Virginia Life, Accident and Sickness Guaranty Association

This bill amends §§ 38.2-1700 and 38.2-1704 to limit the protection of the Virginia Life, Accident and Sickness Insurance Guaranty Association (Guaranty Association) to Virginia residents only except in certain narrowly defined circumstances in which similar coverage is not available in another state. This substantially limits the potential liabilities of the Guaranty Association and will bring Virginia law into conformity with the NAIC Model Act and with the approach taken by the majority of other states.

Senate Bill 581

Annual Statements and Reports of Insurers

- This bill amends §§ 38.2-1300 and 38.2-1301 to require insurers to file copies of their statutory financial statements with the NAIC (by March 1) in the same format as required by the State Corporation Commission unless a specific insurer is exempted from this requirement by the Commission. The requirement applies to any amendments and addenda to the annual statement filing as well as any additional filings prescribed by the Commission for the preceding year. The Commission will also be able to require the submission of quarterly statements to the NAIC. These submissions will help coordinate the database of the Commission with that of the NAIC and will enhance the NAIC's ability to track the financial condition of the industry.

This bill also adds § 38.2-1310.1 to address assets which shall be not admitted for purposes of determining an insurer's financial condition. Goodwill, trade names and other intangible assets, certain advances and certain equity interests, and assets of doubtful value or character are described as assets not admitted.

Senate Bill 595

Capital and Surplus Requirements

This bill amends §§ 38.2-1028-1031, 38.2-1037, 38.2-1206 and 38.2-1207 and 38.2-1213 to prescribe new minimum surplus requirements by July 1, 1994. The minimum requirement is \$3 million for stock insurers and \$1.6 million for assessable mutual insurers. Mutual insurers issuing policies without contingent liability need at least \$4 million of surplus. The requirements for reciprocals are similar to the surplus requirements for mutual insurers. Alien insurers are required to have at least \$4 million in trusteed surplus.

The bill also amends § 38.2-1038 to permit the State Corporation Commission to issue an order concerning an insurer's hazardous financial condition after reviewing the insurer's financial statements and finding that there is a reasonable expectation that the insurer will not be able to meet its obligations to all policyholders. An on-site financial examination finding of a current hazardous financial condition is no longer required before the Commission's order can be issued.

This bill amends § 38.2-1045 to increase the maximum current market value of securities to be deposited by insurers with the State Treasurer from \$200,000 to \$500,000. The amendment also provides that no surety bond may be deposited with the Treasurer, in lieu of securities, after June 30, 1991 and that any surety bonds so deposited before July 1, 1991 must be replaced by the next renewal, anniversary, or expiration date of such bond, or not later than June 30, 1992, whichever first occurs.

Senate Bill 670

Reinsurance

This bill adds a new Article 3.1 in Chapter 13 of Title 38.2. The article is based on the NAIC Model Law on Credit for Reinsurance and includes guidelines for determining when credit will be allowed for reinsurance. It also contains provisions required in reinsurance agreements and relating to letters of credit and trust documents used in a reinsurance transaction. A formal filing and review process provides the steps by which an insurer can be assured credit for reinsurance ceded to licensed, accredited or financially sound assuming insurers. The Commission is also permitted to disallow credits found to have been arranged principally for the purpose of deception or financial statement distortion. The article contains provisions for bringing existing agreements into compliance with the new credit and form requirements between January 1, 1992 and 1993.

MISCELLANEOUS

House Bill 335

VIRGINIA INSURANCE LAWS PERTAINING TO LENDING INSTITUTIONS SELLING INSURANCE

During the 1991 Session of the General Assembly, Title 38.2 of the Code of Virginia was amended to permit lending institutions to sell all types of insurance. Shown below are the laws that were repealed and amended as well as the disclosure requirements and prohibitions applicable to lending institutions that sell insurance. Lending institutions, their officers and employees are subject to all other laws and regulations affecting insurance agents and agencies in general.

Repealed Laws under House Bill 335

1. Section 38.2-204 (Insurance companies not to engage in banking)
2. Section 38.2-205 (Prohibited insurance activities of lending institutions and bank holding companies)
3. Section 38.2-1811 (Licensing of lending institutions and bank holding companies for certain classes of insurance)

Amended Laws under House Bill 335

1. Section 38.2-513 (Favored agent or insurer; coercion of debtors)
2. Section 38.2-514 (Failure to make disclosure)
3. Section 38.2-1824 (Kinds of agents' licenses and appointments issued)

Disclosure Requirements under House Bill 335

A lending institution, bank holding company, savings institution holding company, or subsidiary or affiliate licensed to sell insurance must disclose the following to an individual who purchases insurance:

1. The cost of insurance;
2. That the individual may obtain insurance through other sources and that the availability of an account or loan relationship and the interest rates paid or charged for a loan or an extension of credit may not be made contingent upon the purchase of insurance;

3. The individual's right to use a 10-day cancellation period to obtain price quotations for insurance from other sources;
4. The actions and forms necessary for the individual to cancel the policy;
5. The individual's right to receive a refund or credit of the unearned pro rata portion of the premium upon cancellation;
6. For life insurance, the "interest adjusted net cost index".

The requirements of § 38.2-513, as amended by HB335, are fully applicable to Life and Health insurance sales as well as Property and Casualty insurance sales,

EXCEPT:

1. Because the insurance laws already contain a minimum of a 10-day free look provision for Life and Health policies with a complete right of rescission and complete premium refund by the insurer during the 10-day period, the requirements of § 38.2-513.E. (subsections 3, 4, and 5) are not applicable to Life and Health insurance.

With regard to Life and Health Insurance, though, there is 1 additional requirement, which appears in § 38.2-514. It requires the agent to provide, prior to the sale of any policy of life insurance, a WRITTEN disclosure to the purchaser of the policy's "interest adjusted net cost index," in compliance with regulations or forms approved by the Commission.

Since the Commission has not adopted a regulation dealing with this, and since the law requires simply that the index be furnished in writing, the Bureau will accept the disclosure in any form that is in compliance with the requirements of any state that has adopted the NAIC Life Insurance Disclosure Model Regulation. For our purposes, the "interest adjusted net cost index" is the same as the "Surrender Cost Comparison Index" described in the Model, either on a Guaranteed Basis, or on both an Illustrated and a Guaranteed Basis if the policy has variable values. The calculations of the indices must be done by the insurer; agents do not have the information necessary to perform the calculations. Most insurers are already providing these indices for policies issued in other states, and there should be little trouble obtaining them for policies being solicited in Virginia.

Prohibitions under House Bill 335

1. Require a borrower to purchase insurance through a particular insurer, agent, or broker;

2. Unreasonably disapprove an insurance policy;
3. Require payment of a separate charge for handling an insurance policy or for substituting one policy for another;
4. Use or disclose information when such information is to the advantage of the mortgagee, vendor, lender, or subsidiary or to the detriment of the borrower, mortgagor, purchaser, insurer, agent, or broker except as required by law;
5. Solicit insurance from a person interested in securing a mortgage before giving a commitment in writing as to the loan or extension of credit;
6. Obtain or use, for any purpose related to the sale of insurance, any information contained in an insurance contract covering a customer if the contract was sold to the customer by a broker or agent not affiliated with the institution, subsidiary, or affiliate and the contract or information was obtained from the customer in connection with a request for an extension of credit;
7. Solicit or effect the sale of an annuity, life insurance policy, or an accident and sickness insurance policy without furnishing the disclosure information required by regulation;
8. Act as an agent without first obtaining a license in a manner and in a form prescribed by the Commission;
9. Solicit, negotiate, procure, or effect contracts of insurance on behalf of an insurer not licensed in Virginia unless licensed as a surplus lines broker.

House Bill 899

Premiums on Insurance

This bill amends §38.2-1904 to permit insurers subject to Chapter 19 to file expense reduction plans that permit agents to reduce their commissions in order to reduce the premium being charged to the insured. The new language does not require agents to reduce their commissions nor does it allow an insurer to unreasonably refuse to reduce the premium as a result of the commission reduction.

House Bill 1445

Records of Licensed Agents and Insurance Consultants

This bill amends §38.2-1809 to provide that licensed agents and insurance consultants are not required to retain records of

premium quotations which are not accepted by an insured or a prospective insured.

House Bill 1455

Nonresident Insurance Agent's Licenses

This bill amends §38.2-1822 to allow certification by the insurance department of a nonresident's state of domicile to serve as proper proof of corporate authority and existence for the licensing of a nonresident insurance agency in Virginia. Such certification will serve to satisfy the requirements set forth in subsection A of § 38.2-1836 and subsection C of § 38.2-1822.