

**COMMONWEALTH OF VIRGINIA**  
**STATE CORPORATION COMMISSION**  
**BUREAU OF INSURANCE**

AT RICHMOND, June 15, 2005  
ADMINISTRATIVE ORDER NO. 11704

PRIVATE PASSENGER AUTOMOBILE INSURANCE

ESTABLISHMENT OF STANDARD FORMS OF POLICIES, RIDERS, ENDORSEMENTS, AND OTHER SPECIAL OR SUPPLEMENTAL AGREEMENTS AND PROVISIONS FOR USE BY ALL INSURANCE COMPANIES IN INSURING (1) AGAINST LOSS OR DAMAGE RESULTING FROM ACCIDENT TO, OR INJURY SUFFERED BY, ANY PERSON, AND FOR WHICH THE PERSON INSURED IS LIABLE, (2) AGAINST LOSS BY LIABILITY FOR DAMAGE TO PROPERTY RESULTING FROM THE OWNERSHIP, MAINTENANCE OR USE OF ANY MOTOR VEHICLE, AND (3) AGAINST LOSS OF OR DAMAGE TO ANY MOTOR VEHICLE OWNED BY THE INSURED, PURSUANT TO THE PROVISIONS OF SECTIONS 38.2-2218 TO 38.2-2223, INCLUSIVE, OF THE CODE OF VIRGINIA.

WHEREAS, Pursuant to the provisions of Sections 38.2-2218 to 38.2-2223, inclusive, of the Code of Virginia, certain forms of policies, riders, endorsements, and other special or supplemental agreements and provisions for use by all insurance companies in insuring (1) against loss or damage resulting from accident to, or injury suffered by, any person, and for which the person insured is liable, (2) against loss by liability for damage to property resulting from the ownership, maintenance or use of any motor vehicle, and (3) against loss of or damage to any motor vehicle owned by the insured have been established;

AND IT APPEARING to the Commissioner of Insurance that a statutory change enacted effective July 1, 2005, necessitated a change to a standard form endorsement;

IT IS, THEREFORE, ORDERED, That the following endorsement for use in connection with the Family Automobile Policy standard form, be, and it hereby is, filed by the State Corporation Commission, Bureau of Insurance, in its office at Richmond, Virginia:

A799j (7-1-05) Family Automobile Form – Virginia Amendatory Endorsement

IT IS FURTHER ORDERED, That, except as hereinafter provided, the new endorsement shall become the standard form thereof for use by all insurance companies using the Family Automobile Forms applicable to all policies effective on and after July 1, 2005, and thereafter no insurance company shall use any form covering substantially the same agreement provided for by such form for use with the Family Automobile Forms, unless it is in the precise language of the standard form.

IT IS FURTHER ORDERED, That if there is objection to the provisions of the proposed standard form the objection must be filed in writing within twenty days from the date upon which this Order is entered. If written objection is filed, such forms shall not become standard as provided herein and proceedings in reference thereto shall be instituted.

IT IS FURTHER ORDERED, That the Bureau of Insurance shall immediately notify all parties to whom attested copies of this Order are directed, in writing, upon receipt of an objection from any insurance company as to the provisions of any proposed standard form.

IT IS FURTHER ORDERED, That for the word “company” appearing in any standard form, there may be substituted a more accurate descriptive term for the type of insurer.

IT IS FURTHER ORDERED, That there being, in the opinion of the Commissioner, no further necessity for the continuance of the following endorsement, it is withdrawn for policies effective on and after July 1, 2005:

A799i (7-1-96) Family Automobile Form – Virginia Amendatory Endorsement

IT IS FURTHER ORDERED, That attested copies of this Order be sent to all licensed rate service organizations, Mary M. Bannister, Deputy Commissioner of Insurance and all companies which are affected thereby.

## **SUMMARY OF CHANGES – ADMINISTRATIVE ORDER 11704**

### **Introduction**

The Family Automobile Policy Program is a legal language standard form. The changes outlined below are applicable to only the Family Automobile Policy Program.

### **Content of Administrative Order 11704**

The changes contemplated in Administrative Order 11704 pertain to the following legal language private passenger automobile standard form:

- Form A799j (7-1-05) Family Automobile Form – Virginia Amendatory Endorsement replaces form A799i (7-1-96) Family Automobile Form – Virginia Amendatory Endorsement for all policies effective on and after July 1, 2005

### **Purpose**

The change to this form involves the “Persons Insured” provision under Part I – Liability:

This change was made in compliance with Senate Bill 1260. This bill amended the provisions of Virginia Code § 38.2-2204 to provide that when one accident or occurrence involves more than one defendant who is covered by the policy, the plaintiff may recover the per person limit of the policy against each such defendant, subject to the per accident or occurrence limit of the policy.

**FAMILY AUTOMOBILE FORM**

**VIRGINIA AMENDATORY ENDORSEMENT**

It is agreed that:

**PART I**

1. The first and second paragraphs of "Persons Insured" are amended to read:

Persons Insured

The following are insureds under Part I:

- (a) with respect to the owned automobile,
  - (1) the named insured and any resident of the same household,
  - (2) any other person using such automobile with the permission of the named insured, provided his actual operation or (if he is not operating) his other actual use thereof is within the scope of such permission, and
  - (3) any other person or organization but only with respect to his or its liability because of acts or omissions of an insured under (a) (1) or (2) above;
- (b) with respect to a non-owned automobile,
  - (1) the named insured,
  - (2) any relative, but only with respect to a private passenger automobile or trailer,  
  
provided his actual operation or (if he is not operating) the other actual use thereof is with the permission, or reasonably believed to be with the permission, of the owner and is within the scope of such permission, and
  - (3) any other person or organization not owning or hiring the automobile, but only with respect to his or its liability because of acts or omissions of an insured under (b) (1) or (2) above.

The insurance afforded under Part 1 applies separately to each insured against whom claim is made or suit is brought, but the inclusion herein of more than one insured shall not operate to increase the "each occurrence" limit of the company's liability.

**FAMILY AUTOMOBILE FORM**

**VIRGINIA AMENDATORY ENDORSEMENT (Continued)**

2. The definition of "owned automobile" is amended to read:

"owned automobile" means

- (a) a private passenger, farm or utility automobile described in this policy for which a specific premium charge indicates that coverage is afforded,
- (b) a trailer owned by the named insured,
- (c) a private passenger, farm or utility automobile ownership of which is acquired by the named insured during the policy period, provided
  - (1) it replaces an owned automobile as defined in (a) above, or
  - (2) the company insures all private passenger, farm and utility automobiles owned by the named insured on the date of such acquisition and the named insured notifies the company during the policy period or within 30 days after the date of such acquisition of his election to make this and no other policy issued by the company applicable to such automobile, or
- (d) a temporary substitute automobile;

3. The definition of "temporary substitute automobile" is amended to read:

"temporary substitute automobile" means any automobile or trailer, not owned by the named insured, while temporarily used with the permission of the owner as a substitute for the owned automobile or trailer when withdrawn from normal use because of its breakdown, repair, servicing, loss or destruction;

4. The definition of "farm automobile" is amended to read:

"farm automobile" means an automobile of the truck type not used for business or commercial purposes other than farming;

**FAMILY AUTOMOBILE FORM**

**VIRGINIA AMENDATORY ENDORSEMENT (Continued)**

5. The definition of "utility automobile" is amended to read:

"utility automobile" means an automobile, other than a farm automobile, of the pick-up body, sedan delivery or panel truck type not used for business or commercial purposes;

6. Exclusion (g) and (h) are amended and a new exclusion is added to read:

(This policy does not apply under Part I:)

(g) to any automobile or trailer while maintained or used by any person while such person is employed or otherwise engaged in the automobile business to the extent that the limits of liability for this policy exceed the limits of liability required by the Virginia financial responsibility law, but this exclusion (g) does not apply to the maintenance or use of an owned automobile by

(1) the named insured; or

(2) directors, stockholders, partners, agents or employees of the named insured; or

(3) a resident of the same household as a person described in (1) or (2) above.

(h) to a non-owned automobile while maintained or used by any person while such person is employed or otherwise engaged in any business or occupation of the insured, except the automobile business, but this exclusion (h) does not apply to a private passenger automobile operated or occupied by the named insured or by his private chauffeur or domestic servant, or a trailer used therewith or with an owned automobile.

(j) to the ownership, maintenance, operation, use, loading or unloading of an automobile ownership of which is acquired by the named insured during the policy period or any temporary substitute automobile therefore, if the named insured has purchased other automobile liability insurance applicable to such automobile for which a specific charge has been made.

## FAMILY AUTOMOBILE FORM

### VIRGINIA AMENDATORY ENDORSEMENT (Continued)

#### PART II

The Expenses for Medical Services portion of the policy is deleted in its entirety and replaced by the following:

When a specific premium charge is shown in the declarations for Section I and/or Section II, the company agrees with the named insured, subject to all the provisions of the policy except as modified herein, as follows:

#### **Section I Medical Expense Benefits**

The company will pay, in accordance with Sections 38.2-2201 or 46.2-465 of the Code of Virginia, each injured person, medical expense benefits as a result of bodily injury caused by accident and arising out of the ownership, maintenance or use of a motor vehicle as a motor vehicle.

#### **Exclusions**

This insurance does not apply:

- (a) to bodily injury sustained by any person who intentionally causes injury to himself;
- (b) to bodily injury sustained by any person to the extent that benefits therefore are in whole or in part payable under any workmen's compensation law, employer's disability benefits law or any other similar law;
- (c) to bodily injury sustained while occupying the insured motor vehicle while used as a public or livery conveyance, but this exclusion does not apply with respect to any insured motor vehicle designated in the policy as a public or livery conveyance;
- (d) to bodily injury sustained by any person while occupying a motor vehicle, unless such person has or reasonably believes he has the permission of the owner to use such motor vehicle and the use is within the scope of such permission;

## FAMILY AUTOMOBILE FORM

### VIRGINIA AMENDATORY ENDORSEMENT (Continued)

- (e) to bodily injury sustained by the named insured or any relative while occupying any motor vehicle owned by or furnished or available for the regular use of such named insured or relative and which is not an insured motor vehicle;
- (f) to bodily injury due to war whether or not declared, civil war, insurrection, rebellion or revolution, or any act or condition incident to any of the foregoing.

#### Definitions

The definitions under Part I of the policy apply to Part II except as modified herein:

"bodily injury" means bodily injury, sickness or disease, including death resulting therefrom;

"injured person" means

- (a) the named insured or any relative who sustains bodily injury while occupying a motor vehicle, or if struck by a motor vehicle while not occupying a motor vehicle;
- (b) any other person who sustains bodily injury while occupying
  - (1) the insured motor vehicle;
  - (2) a non-owned automobile which the named insured or relative is operating; or
  - (3) a temporary substitute automobile;

"insured motor vehicle" means a motor vehicle with respect to which

- (a) the named insured is the owner; and
- (b) the bodily injury liability or the property damage liability insurance of the policy applies, and
- (c) the insurance under this coverage applies and for which a specific premium has been charged;



## FAMILY AUTOMOBILE FORM

### VIRGINIA AMENDATORY ENDORSEMENT (Continued)

"medical expense" means all reasonable and necessary expenses for medical, hospital, chiropractic, x-ray, professional nursing, dental, surgical, ambulance, prosthetic and rehabilitation services, and funeral expenses, incurred within three years after the date of the accident;

"medical expense insurance" means any motor vehicle insurance providing benefits for medical expenses without regard to fault;

"motor vehicle" means a self-propelled land motor vehicle or trailer other than (1) a farm type tractor or other self-propelled equipment designed for use principally off public roads, while not upon public roads, (2) a vehicle operated on rails or crawler treads, or (3) a vehicle located for use as a residence or premises;

"named insured" means the individual or organization named in Item 1 of the declarations;

"non-owned automobile" means a motor vehicle which is not

- (a) used as a public or livery conveyance; or
- (b) owned by or furnished or available for the regular use of either the named insured or any relative; or
- (c) a temporary substitute automobile;

"occupying" means in or upon or entering or alighting from;

"relative" means a person related to the named insured by blood, marriage or adoption, including wards or foster children, who is a resident of the same household as the named insured.

#### **Limits of Liability**

Regardless of the number of:

1. persons or organizations who are insureds under this policy,
2. persons who sustain bodily injury, or
3. claims made or suits brought on account of bodily injury,

the company's liability for MEDICAL EXPENSE BENEFITS to any one person who sustains bodily injury shall not exceed:

## FAMILY AUTOMOBILE FORM

### VIRGINIA AMENDATORY ENDORSEMENT (Continued)

- (a) the limit of liability for Medical Expense Benefits stated in the declarations as applicable to each injured person when there is only one insured motor vehicle; or
- (b) the sum of the highest limits of liability for Medical Expense Benefits stated in the declarations as applicable to each injured person for each insured motor vehicle up to a maximum of 4, when the medical expense costs incurred by the injured person exceed the limit of liability for any one vehicle so insured.

If other valid and collectible medical expense insurance is applicable to the bodily injury of an injured person, the benefits shall be paid according to the following order of priority:

- (a) the medical expense insurance of the owner of the motor vehicle the injured person was occupying at the time of the accident.
- (b) the medical expense insurance of the operator of the motor vehicle the injured person was occupying at the time of the accident.
- (c) the medical expense insurance of the injured person.

However, in no event shall any injured person collect more than his actual medical expense incurred as a result of an accident from this or any other motor vehicle insurance policy or combination of such policies providing medical expense insurance applicable to such accident.

#### **Section II Income Loss Benefits**

The company will pay, in accordance with Sections 38.2-2201 or 46.2-465 of the Code of Virginia, each injured person, income loss benefits as a result of bodily injury caused by accident and arising out of the ownership, maintenance or use of a motor vehicle as a motor vehicle.

## FAMILY AUTOMOBILE FORM

### VIRGINIA AMENDATORY ENDORSEMENT (Continued)

#### Exclusions

The exclusions contained in Section I also apply to Section II and the insurance under Section II does not apply to bodily injury sustained by any person in the course of his occupation while engaged (1) in duties incident to the operation, loading or unloading of, or as an assistant on a public or livery conveyance or commercial automobile, or (2) in duties incident to the repair or servicing of automobiles.

#### Definitions

The definitions under Section I apply to Section II and under Section II:

"income loss" means an amount equal to the loss of income incurred by an injured person usually engaged in a remunerative occupation, within one year after the date of the accident, and as a result of disability caused by the accident.

"income loss insurance" means any motor vehicle insurance providing benefits for income loss.

#### Limits of Liability

Regardless of the number of:

1. persons or organizations who are insureds under this policy,
2. persons who sustain bodily injury, or
3. claims made or suits brought on account of bodily injury,

the company's liability for INCOME LOSS BENEFITS to any one person who sustains bodily injury in any one motor vehicle accident shall not exceed:

- (a) \$100 per week for income loss when there is only one insured motor vehicle, or
- (b) \$100 per week for income loss, multiplied by the number of insured motor vehicles up to a maximum of 4, when the income loss incurred by the injured person exceeds the limit of liability for any one vehicle so insured.

## FAMILY AUTOMOBILE FORM

### VIRGINIA AMENDATORY ENDORSEMENT (Continued)

In no event shall the limit of liability exceed \$400 per week for any one injured person in any one accident. Income loss is computed from the first work day lost as a result of the accident up to the date the injured person is able to return to his usual occupation or the date of death of such injured person, whichever occurs first.

If other valid and collectible income loss insurance is applicable to an injured person, the benefits shall be paid according to the following order of priority:

- (a) the income loss insurance of the owner of the motor vehicle the injured person was occupying at the time of the accident;
- (b) the income loss insurance of the operator of the motor vehicle the injured person was occupying at the time of the accident;
- (c) the income loss insurance of the injured person.

However, in no event shall any injured person collect more than his actual income loss incurred as a result of an accident from this or any other motor vehicle insurance policy or combination of such policies providing income loss insurance applicable to such accident.

Any payments made by the company under this insurance shall be applied in reduction of the amount of damages which because of bodily injury sustained in the same accident, such injured person may be entitled to recover from the company under insurance afforded by this policy for bodily injury liability or protection against uninsured motorists.

### CONDITIONS

The Conditions of the policy apply to Part II except as modified herein:

1. **Notice.** In the event of an accident, the company requires that written notice containing particulars sufficient to identify the injured person and also reasonably obtainable information respecting the time, place and circumstances of the accident shall be given by or on behalf of each injured person to the company or any of its authorized agents as soon as practicable. The

## FAMILY AUTOMOBILE FORM

### VIRGINIA AMENDATORY ENDORSEMENT (Continued)

failure or refusal of the injured person to give such notice shall not relieve the company of its obligation to pay unless such failure or refusal prejudices the company in establishing the validity of any claim under this coverage. If any injured person or his legal representative shall institute legal action to recover damages for bodily injury against a person or organization who is or may be liable to in tort therefore, a copy of the summons and complaint or other process served in connection with such legal action shall be forwarded as soon as practicable to the company by such injured person or his legal representative.

2. **Action Against Company.** No action shall lie against the company unless as a condition precedent thereto, there shall have been full compliance with all the terms of this insurance.

3. **Medical Reports; Proof of Claim.** As soon as practicable the injured person or someone on his behalf shall give to the company written proof of claim under oath, if required, including full particulars of the nature and extent of the injuries and treatment received and contemplated and such other information as may assist the company in determining the amount due and payable. The injured person shall submit to physical examinations by physicians selected by the company at the expense of the company when and as often as the company may reasonably require.

The injured person, or in the event of his incapacity or death, his legal representative, shall upon each request from the company execute authorization to enable the company to obtain medical reports, copies of records and information with respect to loss of income. The company may require that the injured person, as condition for receiving income loss benefits, cooperate in furnishing the company reasonable medical proof of his inability to work.

4. **Policy Period; Territory.** This insurance applies only to accidents which occur during the policy period within the United States of America, its territories or possessions, or Canada.

5. **Subrogation.** In the event of any payment under Section II - Income Loss Benefits, the company shall be subrogated to all the injured person's rights of recovery therefore against any person or organization and the injured person shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The injured person shall do nothing after loss to prejudice such rights.

## FAMILY AUTOMOBILE FORM

### VIRGINIA AMENDATORY ENDORSEMENT (Continued)

#### PART III

1. The Comprehensive insuring agreement is amended to read as follows:

##### Coverage D (1) - Comprehensive (excluding Collision)

To pay for loss caused other than by collision to the owned automobile or to a non-owned automobile. For the purpose of this coverage, breakage of glass and loss caused by missiles, falling objects, fire, theft or larceny, explosion, earthquake, windstorm, hail, water, flood, malicious mischief or vandalism, riot or civil commotion, or colliding with a bird or animal, shall not be deemed to be loss caused by collision.

2. Supplementary Payments.

Paragraph (a) is amended to read:

- (a) to reimburse the insured for transportation expenses incurred during the period commencing 48 hours after a theft covered by this policy of the entire automobile has been reported to the company and the police, and terminating when the automobile is returned to use or the company pays for the loss; provided that the company shall not be obligated to pay aggregate expenses in excess of \$20 per day or totaling more than \$500.

Paragraph (c) is added to read:

- (c) the company will pay (i) and (ii) below provided that the loss is covered by Part III of this policy and results in the total loss of an automobile insured under Part III of this policy.
  - (i) state and local sales and use taxes equal to the amount of said taxes based on the actual cash value of the automobile at the time of the loss; and
  - (ii) titling and license transfer fees incidental to the transfer of ownership to a replacement vehicle.

## FAMILY AUTOMOBILE FORM

### VIRGINIA AMENDATORY ENDORSEMENT (Continued)

3. The preamble to the "Definitions" provisions is amended to read:

Definitions.

The definitions of "named insured", "relative", "temporary substitute automobile", "private passenger automobile", "farm automobile", "utility automobile", "automobile business", "war", and "owned automobile" in Part I apply to Part III, but "owned automobile" does not include, under Part III, (1) a trailer owned by the named insured on the effective date of this policy and not described herein, or (2) a trailer ownership of which is acquired during the policy period unless the company insures all private passenger, farm and utility automobiles and trailers owned by the named insured on the date of such acquisition and the named insured notifies the company during the policy period or within 30 days after the date of such acquisition of his election to make this and no other policy issued by the company applicable to such trailer.

4. The definition of "insured" is amended to read:

"insured" means

- (a) with respect to an owned automobile
  - (1) the named insured, and
  - (2) any person or organization (other than a person or organization employed or otherwise engaged in the automobile business or as a carrier or other bailee for hire) maintaining, using or having custody of said automobile with the express or implied permission of the named insured and within the scope of such permission;
- (b) with respect to a non-owned automobile, the named insured and any relative while using such automobile, provided his actual operation or (if he is not operating) the other actual use thereof, is with the express or implied permission, or reasonably believed to be with the permission, of the owner and is within the scope of such permission.

5. Exclusion (c) is amended to read:

This policy does not apply under Part III

- (c) to loss to a non-owned automobile arising out of its use by the insured while he is employed or otherwise engaged in the automobile business;

## FAMILY AUTOMOBILE FORM

### VIRGINIA AMENDATORY ENDORSEMENT (Continued)

#### CONDITIONS

1. The "Premium" Condition is amended to read:

##### **Premium**

If the named insured disposes of, acquires ownership of, or replaces a private passenger, farm or utility automobile or, with respect to Part III, a trailer, any premium adjustment necessary shall be made as of the date of such change in accordance with the manuals in use by the company. The named insured shall, upon request, furnish reasonable proof of the number of such automobiles or trailers and a description thereof.

2. The "Assistance and Cooperation" Condition is amended to read:

##### **Assistance and Cooperation of the Insured**

Parts I and III - The insured shall cooperate with the company and upon the company's request, assist in making settlements, in the conduct of suits and in enforcing any right of contribution or indemnity against any person or organization who may be liable to the insured because of bodily injury, property damage or loss with respect to which insurance is afforded under this policy; and the insured shall attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses. The insured shall not, except at his own cost, voluntarily make any payment, assume any obligation or incur any expense other than for such immediate medical and surgical relief to others as shall be imperative at the time of the accident.

3. The "Assignment" Condition is amended to read:

##### **Assignment**

Assignment of interest under this policy shall not bind the company until its consent is endorsed hereon; if, however, the insured named in Item 1 of the declarations or his spouse if a resident of the same household, shall die, this policy shall cover (1) the survivor as named insured, (2) his legal representative as named insured but only while acting within the scope of his duties as such, (3) any person having proper temporary custody of an owned automobile, as an insured, until the appointment and qualification of such legal representative, and (4) under Part II any person who was a relative at the time of such death.