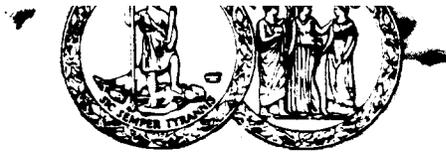


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**STATE CORPORATION COMMISSION
BUREAU OF INSURANCE**

May 11, 1986

**ADMINISTRATIVE LETTER
1986-6**

TO: All Insurance Companies, Prepaid Health Care Plans, Health Maintenance Organizations and Continuing Care Providers

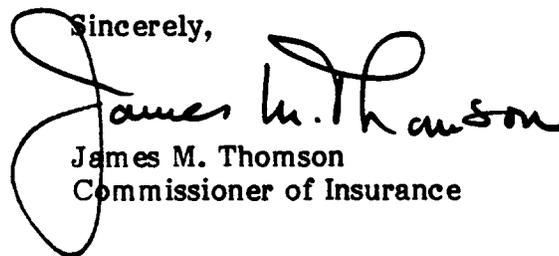
RE: Legislation enacted by the 1986 Session of the General Assembly of Virginia

Attached are summaries of certain statutes enacted or amended and reenacted by the General Assembly of Virginia during the 1986 Session. The bill that recodified Virginia's insurance laws (SB 250) is not included in these summaries. A summary of the major changes under the recodification bill will be sent to you under separate cover. Please be advised that all sections of Title 38.1 will be renumbered under the new Title 38.2 as part of the recodification process.

The effective date of these statutes is July 1, 1986 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 licensed representatives) to insure that appropriate action is taken to effect compliance with these new legal requirements.

Sincerely,



James M. Thomson
Commissioner of Insurance

JMT:bt
Attachment

PROPERTY AND CASUALTY INSURANCE

Senate Bill 92

Temporary Substitute Vehicles. This bill amends § 8.01-66 by providing that any failure or refusal of an insurer to provide a temporary substitute vehicle to any person that is entitled to such recovery shall render the insurer liable for the greater of \$500 or double the amount of the rental cost if such failure or refusal is not made in good faith. However, if any action brought against an insurer under this provision is found to be frivolous or to have not been brought in good faith, the court may require the plaintiff to pay reasonable attorney's fees incurred by the insurer subject to a \$200 maximum.

Senate Bill 293

Cancellation of Vanpool Vehicles. This bill amends the Code of Virginia by adding a new section numbered 38.1-381.11 which prohibits automobile insurers from canceling or non-renewing policies that insure vehicles used in vanpooling as defined in § 56-274 and where these vehicles are used to transport commuters to and from work, except where the insured has failed to pay his premium or where the driving record of the named insured or any regular driver is such that it substantially increases the risk. In addition, on and after July 1, 1986, no insurer that issues or renews a policy of motor vehicle liability insurance insuring a vehicle not being used for vanpooling at the time of such issuance or renewal shall be subject to the provisions of this bill unless the insurer receives by certified mail thirty days' written notice that the insured intends to use the vehicle for vanpooling. The provisions of this bill expire on July 1, 1987.

House Bill 140

Notice of Cancellation of Commercial Liability Insurance Policies. This bill amends the Code of Virginia by adding a section numbered 38.1-43.01 which requires insurers to give forty-five days written notice of cancellation or non-renewal of commercial liability insurance policies. However, where termination is for non-payment of premium only fifteen days notice is required. The insurer is also required to give the reasons for termination, send the notice in essentially the same manner prescribed for personal auto policies, and advise the insured of his right to a review by the Commissioner of Insurance.

This bill applies only to notices sent on or after July 1, 1986. These notices must be approved by the Commission prior to use. The Bureau of Insurance will be prescribing a model notice form that may be used by all insurers. A separate Administrative Letter setting forth this model form will be mailed to all property and casualty insurers licensed in Virginia.

Workers' Compensation Benefits. This bill amends § 65.1-46 of the Code of Virginia and adds § 65.1-46.1 to the Code to address workers' compensation coverage for an ordinary disease of life. The bill is intended to place the Industrial Commission in a position that it occupied prior to a line of cases decided by the Supreme Court of Virginia beginning with the case of Western Electric Company v. Gilliam, 229 Va. 245 (1985). The effect of those opinions was to remove from compensability any ordinary disease of life either contracted in the employment place or aggravated by the employment place.

The amendment to § 65.1-46 sets the evidentiary standards to establish that a disease is indeed occupational and compensable and excludes any conditions of the neck, back, or spinal column because of concern of the possible proliferation of claims which might arise as a result of the aging process and injuries incurred over a cumulative period of time without a traumatic incident. Ordinary diseases of life are excluded from this section.

The addition of § 65.1-46.1 recognizes that under certain circumstances ordinary diseases should be covered and sets the evidentiary standards by which an ordinary disease of life can be found compensable.

House Bill 601

Insurance Business of a Bank Subsidiary. This bill broadens the ability of banks to transact insurance by amending § 6.1-58.2 to allow them to insure the liability risks associated with such banks, their holding companies, their affiliates, and their officers and directors through controlled subsidiary corporations.

House Bill 732

Motor Vehicle Liability. This bill amends paragraph (a1) of § 38.1-381 by providing that where an "...insurer has elected to provide a defense to its insured... and files responsive pleadings in the name of its insured, the insured shall not be subject to sanctions for failure to comply with discovery... unless it can be shown that the suit papers actually reached the insured, and that the insurer has failed after exercising due diligence to locate its insured, and as long as the insurer provides such information in response to discovery as it can without the assistance of the insured."

LIFE AND HEALTH INSURANCE AND PREPAID HEALTH CARE PLANS

House Bill 290

Failure to Remit Group Health Care Premiums. This bill amends § 38.1-356.01 by increasing the penalty from a Class 3 misdemeanor to a Class 1 misdemeanor for an employer who collects from his employees any part of the cost of (i) group health insurance, (ii) prepaid hospital and medical coverage, or (iii) providing medical care or reimbursement for medical care as a self-insurer, and knowingly fails to remit the funds to the insurer or plan in accordance with the policy or contract provisions. (A Class 3 misdemeanor is punishable by a fine of not more than \$500; a Class 1 misdemeanor is punishable by confinement in jail for not more than 12 months and a fine of not more than \$1000, either or both.)

S.C.C. Approval of Mergers Required. This bill amends the Code of Virginia by adding a section numbered 38.1-812.1 which requires the Commission's prior approval of mergers involving prepaid hospital, medical and surgical service corporations. The Commission shall approve a proposed merger unless it finds that:

1. The new or surviving corporation would not be able to meet the requirements for licensure;
2. The merger would lessen competition substantially or tend to create a monopoly in health care benefits;
3. The financial condition of any party to the merger might jeopardize the financial stability of the new or surviving corporation or prejudice the interest of the subscriber;
4. The plans of the new or surviving corporation to liquidate, sell its assets, merge or make any other material change in its business or corporate structure or management are unfair and unreasonable to subscribers and not in the public interest.
5. The competence, experience and integrity of the persons who would control the new or surviving corporation are such that it is not in the interest of the subscribers or public interest to permit the merger; or
6. The new or surviving corporation's surplus to subscribers would not be reasonable in relation to its outstanding liabilities or adequate to its financial needs.

House Bill 844

Medical Assistance Exclusion Prohibited. This bill:

1. Adds a new section numbered 32.1-325.1 which provides that medical insurance carriers are prohibited from including any clause in health care insurance contracts which would exclude payment for health care to individuals eligible for medical assistance. This section also provides that the Department of Medical Assistance Services will be the payor of last resort to any health insurance carrier that contracts to pay health care costs for persons eligible for medical assistance in the Commonwealth;
2. Amends § 38.1-348, which applies to individual accident and sickness insurance policies, to require such policies to contain a statement about the provisions in § 32.1-325.1; and
3. Makes § 38.1-348 applicable to Blue Cross/Blue Shield associations by amending § 38.1-818.

Senate Bill 169 and House Bill 604

Certain Definitions Amended. Both bills amend the definitions in § 38.1-863 of the HMO chapter so that:

1. "Basic health care services" includes limited treatment of mental illness and substance abuse in accordance with such minimum standards as may be prescribed by the Commission. The minimum standards shall not exceed the level of services mandated for insurance carriers pursuant to Article 2 of Chapter 8 of Title 38.1; and
2. The word "nominal" is deleted from the definition of "Copayment".

House Bill 285

Medical Malpractice. This bill amends the medical malpractice chapter of Title 8.01, which provides for a review of medical malpractice claims, to include a health maintenance organization in the definition of "health care provider."

TITLE INSURANCE

House Bill 595 (Effective 1/1/87)

Title Insurance Agents. This bill amends § 38.1-327.15 of the agent licensing chapter and adds a new section numbered 38.1-327.15:1. The new section requires individuals desiring to become title agents to pass an examination prior to being licensed to solicit, negotiate or effect title insurance. Title agents will also be required to supply the Commission with proof of financial responsibility on an annual basis. Each year title companies must supply the Commission with a list of all of their title agents in Virginia. Officers or employees of a title company who are not agents of a title insurance company are exempt from the new section. Title agents who are presently licensed will have to meet the new requirements by January 1, 1988.

House Bill 690

Unearned Premiums. This bill revises the unearned premium reserve requirement for title insurers. A new section numbered 38.1-730.1 is added and §§ 38.1-730, 38.1-731 and 38.1-732 are repealed. Under the new provisions, the amount of unearned premiums initially posted shall equal \$1.50 for each title insurance contract plus \$.125 per \$1,000 of net retained liability under each contract. Unearned premiums shall then be amortized over twenty years with fifty percent of the unearned premium being amortized in the first five years and the remainder being amortized over the next fifteen years.

CONTINUING CARE PROVIDERS

Senate Bill 65

Escrow of Entrance Fee, etc. This bill substantially amends the Continuing Care Provider Registration and Disclosure Act. The changes are as follows:

prospective resident's living facility is available for occupancy. For the purpose of the new escrow section, any prepayment in excess of \$5,000 shall be considered an entrance fee.

2. Section 38.1-955 is amended to the effect that a facility will be required to charge an entrance fee before it will be considered a continuing care provider. Payment of periodic charges without an entrance fee will not bring a facility under the continuing care provider statutes.
3. The estimated current monthly cost to the provider for providing the care will not need to be specified in each contract under § 38.1-960.
4. Material misrepresentation is added as an authorized good cause for a provider to cancel a continuing care contract under § 38.1-960.

House Bill 455

Certain Providers Exempted. This bill adds a new section numbered 38.1-972 to the Code of Virginia which exempts certain providers from the Continuing Care Provider Registration and Disclosure Act. Those providers that do not charge an entrance fee and which only accept government transfer payments, contributions from charitable organizations and third party health care coverages as their regular periodic payments will be exempted.

TORT REFORM, INSURANCE AVAILABILITY, AND OTHER BILLS OF GENERAL INTEREST

Senate Bill 102 and House Bill 93

Medical Malpractice. This bill amends § 8.01-38 by clarifying the statutory limit of tort liability for certain charitable hospitals. The section is amended so that a charitable hospital, as defined in § 32.1-123 of the Code of Virginia, that is insured for negligence or other tort in an amount not less than \$500,000 for each occurrence shall not be liable for damages in excess of its liability insurance limits or in medical malpractice actions the lesser of such liability insurance limits or one million dollars.

The bill also amends § 8.01-243 by extending the statute of limitations period beyond two years in certain medical malpractice cases involving foreign objects being left in the patient's body and in cases involving fraud, concealment, or intentional misrepresentation which prevents discovery of the injury within the two-year period. In each case the limitations period is extended one year from the date the object or injury is discovered or should have been discovered, but is also limited to ten years from the date the cause of action accrues. However, in the case of minors, the provisions of § 8.01-229 apply to toll the statute of limitations.

Senate Bill 137 and House Bill 469 (Effective 4/7/86)

Group Self-Insurance Pools for Municipalities. Both bills amend Title 15.1 of the Code of Virginia by adding a new chapter, Chapter 11.1 (§ 15.1-503.4:1 et seq.), which allows local governments to form group self-insurance pools for the purpose of providing risk management and insurance coverage for pool members and their employees for acts or

authorized to write:

1. Casualty insurance, including general and professional and public officials liability coverage;
2. Property insurance, including marine insurance and inland marine and transportation insurance coverage;
3. Group life, accident and health coverages including hospital, medical, surgical and dental benefits to the employees of member political subdivisions and their dependents;
4. Automobile insurance, including motor vehicle liability insurance coverage and collision and security for motor vehicles owned or operated, as required by Title 46.1 of the Code of Virginia, and protection against other liability and loss associated with the ownership and use of motor vehicles;
5. Surety and fidelity insurance coverage; and
6. Umbrella and excess insurance coverages.

These pools are not authorized to write workers' compensation insurance.

The bills contain a number of provisions relating to the authority and duties of any such pools. The regulation of these pools is assigned to the Commission which is authorized to establish reasonable requirements and regulations for the approval and monitoring of such pools.

Senate Bill 144

Coverage for Local Electoral Boards. This bill amends § 2.1-526.8 by adding local electoral boards, electoral board members, and general registrars to the state insurance plan to provide professional liability protection for any acts or omissions made in the performance of their duties in the course of employment or authorization.

Senate Bill 188

Medical Malpractice Review Boards. This bill amends Chapter 21.1 of Title 8.01 of the Code of Virginia by adding a new section numbered § 8.01-581.19:1. This section provides immunity from civil liability to persons who provide information to certain medical review boards or committees regarding the investigation of complaints against certain practitioners. Immunity does not apply in cases where the information has been given in bad faith or with malicious intent, or where disclosure of such information is prohibited by federal law or regulations.

Senate Bill 227 (Effective 3/4/86)

Automobile Financial Responsibility. This bill amends Title 46.1 by requiring an annual assessment to be levied against the cash or securities which are deposited with the State Treasurer as proof of financial responsibility. The bill also makes the nonpayment of such assessment grounds for suspension of the driver's license, registration certificates, and registration plates.

Transportation District Liability. This bill amends §§ 8.01-195.2 through 8.01-195.8 by extending the limit of liability presently applicable to the Commonwealth of Virginia to Virginia's transportation districts and to any person, firm, corporation or partnership performing a service pursuant to a contract with a transportation district. It does not extend the limit of liability to agents or employees. The limit of liability is \$25,000 or the maximum limits of any liability policy in force, whichever is greater.

Senate Bill 337 (Effective 3/15/86)

Liability Insurance Plans for Political Subdivisions. This bill amends Chapter 32 of Title 2.1 of the Code of Virginia by adding a new section numbered 2.1-526.8:1 which provides for the establishment of an insurance plan by the State's Division of Risk Management. This insurance plan shall be available to any county, city, or town, as well as many other state or municipal entities. The insurance plan may provide coverage through purchased insurance, self-insurance, or a combination of purchased insurance and self-insurance.

House Bill 401 (Effective 4/16/86)

Fidelity Coverage for Savings and Loans Associations. This bill amends § 6.01-194.20 to allow the Commission's Bureau of Financial Institutions to permit a savings and loan association which cannot obtain fidelity coverage on its officers and employees to continue to operate until such time as such fidelity coverage becomes available.

House Bill 585

Uninsured Motor Vehicles. This bill amends §§ 46.1-167.1 and 46.1-167.3 by making a person who is not the titled owner of an uninsured motor vehicle but who is an operator of such a vehicle guilty of a traffic infraction if that person knows the required uninsured motorist fee has not been paid. The fine shall not exceed \$500. In addition, any person convicted of violating § 46.1-167.3 shall have his license suspended for thirty days.