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STATE CORPORATION COMMISSION
BUREAU OF INSURANCE

May 9, 1977

1977-6

TO: ALL COMPANIES LICENSED TO WRITE MOTOR VEHICLE INSURANCE
IN VIRGINIA

RE: 1977 Acts of the General Assembly of Virginia

At its 1977 Session, the General Assembly of Virginia enacted certain legislation to become effective July 1, 1977, which will affect the manner in which companies conduct the business of insurance in Virginia.

A copy of the new laws is enclosed herewith for your information and record. Such legislation should be directed to the proper person(s), to insure that appropriate action by this company is accomplished.

In this regard, please be advised of the following:

1. Chapter 112 (H 699) amends §§38.1-380.1, 38.1-380.2 and 46.1-497.1 of the Code of Virginia, and provides that the insured has the option of purchasing either or both of the optional automobile Medical Expense and Loss of Income coverages. In addition, coverage applies to the named insured, and the resident spouse and relatives, while occupying or through being struck by a motor vehicle.

Insurance Services Office (ISO) is preparing a form filing consisting of one endorsement in two sections, and with a schedule, to afford the options required by the amended statutes. The endorsement form will be established as a standard automobile form for use by all companies.

In addition, ISO is preparing a Reference Document submission to accomplish appropriate rules amendment and premium separation to afford the required options.

If this company contemplates utilizing the amended rules and premium separation to be contained in the ISO Reference Document submission, such can be accomplished by advising the Commission thereof in writing, in duplicate, indicating therein the ISO Reference Document No. being adopted.

If this company contemplates utilizing amended rules and premium separation other than those to be submitted by ISO, such must be physically filed, in duplicate, with the Commission.

Note that the statutory changes are applicable to all new and renewal motor vehicle liability insurance policies that become effective on and after July 1, 1977.

2. Chapter 188 (S 804) adds §38.1-381.7 to the Code of Virginia, and provides that any insurer issuing policies of automobile insurance shall provide the named insured at the time of issuance or renewal with a statement defining the rate classifications of the insured. The new statute also provides that the Commissioner of Insurance shall approve the form of such statement prior to its use.

Insurance Services Office (ISO) is preparing a Reference Document submission for the Rate Classification Statement form explaining the new expanded Classification Plan (the so-called 161 Class Plan) and the Safe Driver Insurance Plan that were incorporated in the ISO submission on December 27, 1976 of Reference Document PP-77-RA-1.

If this company has adopted the 161 Class Plan and the Safe Driver Insurance Plan by adoption of ISO Reference Document PP-77-RA-1, or if this

company has independently physically filed both such Plans in the precise wording thereof, the required filing of Rate Classification Statement form can be accomplished by advising the Commissioner of Insurance in writing, in duplicate, of the adoption and the No. thereof of the Reference Document that ISO will submit containing the Statement form.

ISO will not submit a Reference Document for a Rate Classification Statement form explaining the old Classification Plan (the so-called 7 Class Plan) and the Safe Driver Insurance Plan which have been in effect in Virginia for a number of years.

If this company continues to use the old 7 Class Plan or the old Safe Driver Insurance Plan, or if this company has independently physically filed a different Classification Plan or a different Safe Driver Insurance Plan, a Rate Classification Statement form explaining the Classification Plan and the Safe Driver Insurance Plan utilized by this company must be physically filed with this office for approval.

Note that the requirement to provide the Rate Classification Statement is applicable to all new and renewal motor vehicle policies that become effective on and after July 1, 1977.

3. Chapter 415 (H 1634) amends §38.1-279.33 of the Code of Virginia, and provides that an insurance company shall not use information to produce rates for individual risks which the Division of Motor Vehicles would be prohibited from furnishing such insurer pursuant to §46.1-31(B)(2), a copy of which is enclosed herewith.

Such prohibition provides that accident and conviction reports furnished by the D.M.V. shall not report any conviction or accident after forty months from the date of such conviction or accident unless the Commissioner (of D.M.V.) or court used said conviction or accident as a reason for the suspension or revocation of a driver's license or driving privilege, in which

case the revocation or suspension and any conviction or accident pertaining thereto shall not be reported after forty months from the date that the driver's license or driving privilege has been reinstated.

Note that the amended statute is applicable to all new and renewal motor vehicle policies that become effective on and after July 1, 1977.

Such means that an insurer shall not use any conviction or accident, the date of which is forty months prior to the effective date of a motor vehicle insurance policy, or as otherwise stipulated, in producing rates for individual risks on new or renewal motor vehicle insurance policies that become effective on and after July 1, 1977.

Accordingly, if this company utilizes a Safe Driver Insurance Plan, or other similar rating procedure, by whatever name such be referred to, a careful study of the provisions of such Plan should be undertaken immediately to ascertain compliance with the amended law, and amendments to such Plan should be filed forthwith, as appropriate.

4. Chapter 181 (S 691) amends §38.1-381.6 of the Code of Virginia, by adding age to the factors which cannot be used by an insurer to refuse to issue a policy of automobile insurance, and adds the proviso that nothing shall prohibit any insurer from setting rates for such insurance in accordance with relevant actuarial data.

Note that the amended statute is applicable to all new and renewal motor vehicle policies that become effective on and after July 1, 1977.

5. Chapter 621 (H 1631) adds §8.01-66.1 to the Code of Virginia, and provides that if a court of proper jurisdiction finds that an

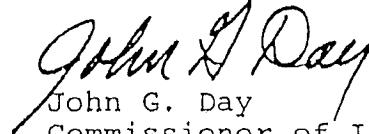
Page 5
May 9, 1977

insurance company licensed to write motor vehicle insurance in Virginia, or others, unreasonably (not in good faith) failed to pay a claim of \$150. or less in excess of any applicable deductible, the court may award double damages and reasonable attorney's fees.

Note that the new statute becomes effective on July 1, 1977, and is applicable to all motor vehicle policies in effect on July 1, 1977 and to all new and renewal policies effective on and after July 1, 1977.

Should you have any questions concerning this matter, kindly communicate same to this office in writing.

Very truly yours,



John G. Day
Commissioner of Insurance

JGD:dbh

Enclosures

§ 46.1-31. Records of Division; when open for inspection; driving records privileged; release of privileged information. — A. All registration and title records in the office of the Division shall be public records, but shall be open for inspection only subject to such regulations as the Commissioner may adopt.

B. The Commissioner shall consider all driving records in the Division as privileged public records and shall release such information only under the following conditions:

1. Upon the request of any individual or parent or legal guardian of a minor or representative thereof, the Commissioner shall provide that individual with a complete explanation of all information pertaining to that individual or minor, except that medical information, which in the judgment of the Commissioner should only be disclosed by a physician, shall be referred to any physician designated by the individual or parent or legal guardian.

2. Upon the request of any insurance carrier or surety or representative thereof, the Commissioner shall furnish an abstract of the operating record of any person subject to the provisions of this title. The abstract shall fully designate any record of any conviction of the person of a violation of any provision of any statute or ordinance relating to the operation or ownership of a motor vehicle or of any injury or damage in which he was involved and a report of which is required by § 46.1-400; provided, however, that no such report of any conviction or accident shall be made after forty months from the date of such conviction or accident unless the Commissioner or court used said conviction or accident as a reason for the suspension or revocation of a driver's license or driving privilege, in which case the revocation or suspension and any conviction or accident pertaining thereto shall not be reported after forty months from the date that the driver's license or driving privilege has been reinstated; and provided further, however, that such abstract shall not be admissible in evidence in any court proceedings. The Commissioner shall charge a reasonable fee for the operating record and may furnish the operating record by electronic means.

3. Upon the request of any business official who provides the Commissioner in writing with an individual's driver's license number, the Commissioner may furnish that person the name and address of the individual as shown on the Division's records for that driver's license number.

4. Upon the request of any law-enforcement officer, Commonwealth's attorney or court, the Commissioner shall provide an abstract of the operating record showing all convictions, accidents, driver's license suspensions or revocations and other appropriate information as the requesting authority may require.

5. Upon request of the driver licensing authority in any other state, the District of Columbia or foreign country, the Commissioner shall provide such information as the requesting authority shall require.

6. Upon the written request of any employer or prospective employer, the Commissioner shall provide an abstract of an individual's operating record showing all convictions, accidents, license suspensions or revocations, and any type of license that the individual currently possesses; provided that the individual's position or the position that the individual is being considered for involves the operation of a motor vehicle.

7. Whenever the Commissioner issues an order to suspend or revoke the driver's license or driving privilege of any individual, he may notify the National Driver Register Service operated by the United States Department of Transportation.

8. Accident reports may be inspected under the provisions of § 46.1-410. (Code 1950, § 46-32; 1958, c. 541; 1964, c. 42; 1976, c. 505.)

The 1976 amendment designated the former subsection B and substituted "and title" for provisions of this section as subsection A, added "title and license" in the present subsection A.

CHAPTER 112

An Act to amend and reenact §§ 38.1-380.1, 38.1-380.2 and 46.1-497.1, as severally amended, of the Code of Virginia, relating to optional motor vehicle liability insurance.

[H 699]

Approved March 8, 1977

Be it enacted by the General Assembly of Virginia:

1. That §§ 38.1-380.1, 38.1-380.2 and 46.1-497.1, as severally amended, of the Code of Virginia are amended and reenacted as follows:

§ 38.1-380.1. Optional provisions as to injuries to named insured, his family and persons occupying insured motor vehicle.— Upon request of its insured, every insurer licensed in this State issuing or delivering any policy or contract of bodily injury liability insurance, or of property damage liability insurance, covering liability arising from the ownership, maintenance or use of any motor vehicle shall provide, on payment of premium established by law for such coverage, as a minimum coverage (1) to the named insured and, while resident of the same household, the spouse and relatives of the named insured *while occupying any or through being struck by a motor vehicle*; and (2) to persons occupying the insured motor vehicle, the following hospital, medical and disability benefits for each accident:

(a) All reasonable and necessary expenses for medical, hospital, dental, surgical, ambulance, prosthetic and rehabilitation services, and funeral expenses, resulting from such accident and incurred within one year after the date of the accident, up to two thousand dollars per person; and

(b) If such person is usually engaged in a remunerative occupation, an amount equal to the loss of income incurred within one year after the date of the accident resulting from injuries received in such accident up to one hundred dollars per week during the period from the first workday lost as a result of the accident up to the date such person is able to return to his usual occupation and for a period not to exceed fifty-two weeks or any part thereof.

The insured has the option of purchasing either or both of the coverages set forth in (a) and (b).

§ 38.1-380.2. Required notice of optional coverage available.— On and after January one, nineteen hundred seventy-five, no original or renewal premium notice for insurance covering liability arising out of the ownership, maintenance or use of any motor vehicle shall be rendered unless it contains on the front of or enclosed with the premium notice in bold faced type, the following legend:

IMPORTANT NOTICE

IN ADDITION TO THE MINIMUM INSURANCE REQUIRED BY LAW YOU MAY PURCHASE ADDITIONAL INSURANCE COVERAGE FOR THE NAMED INSURED AND HIS RELATIVES WHO ARE MEMBERS OF HIS HOUSEHOLD WHILE OCCUPYING OR THROUGH BEING STRUCK BY A MOTOR VEHICLE AS WELL AS

OCCUPANTS OF THE INSURED MOTOR VEHICLE. THE FOLLOWING HOSPITAL, MEDICAL AND DISABILITY BENEFITS ARE AVAILABLE FOR EACH ACCIDENT:

(a) PAYMENT OF UP TO TWO THOUSAND DOLLARS PER PERSON FOR ALL REASONABLE AND NECESSARY EXPENSES FOR MEDICAL, HOSPITAL, DENTAL, SURGICAL, AMBULANCE, PROSTHETIC AND REHABILITATION SERVICES, AND FUNERAL EXPENSES RESULTING FROM SUCH ACCIDENT AND WHICH EXPENSES ARE INCURRED WITHIN ONE YEAR AFTER THE DATE OF THE ACCIDENT; AND

(b) AN AMOUNT EQUAL TO THE LOSS OF INCOME UP TO ONE HUNDRED DOLLARS PER WEEK IF THE INJURED PERSON IS ENGAGED IN AN OCCUPATION FOR WHICH HE RECEIVES COMPENSATION, FROM THE FIRST WORK DAY LOST AS A RESULT OF THE ACCIDENT UP TO THE DATE THE PERSON IS ABLE TO RETURN TO HIS USUAL OCCUPATION. SUCH PAYMENTS ARE LIMITED TO A PERIOD OF FIFTY-TWO WEEKS.

IF YOU DESIRE TO PURCHASE ~~THIS ADDITIONAL INSURANCE~~ EITHER OR BOTH OF THESE COVERAGES AT AN ADDITIONAL PREMIUM, YOU MAY DO SO BY CONTACTING THE AGENT OR COMPANY THAT ISSUED YOUR POLICY.

Furthermore, the insurer issuing the premium invoice shall notify the insured by any reasonable means of communication the approximate premium for such additional coverage.

§ 46.1-497.1. Optional coverage for persons occupying insured motor vehicle and for named insured and his family.—Once an assigned risk policy has been issued to an insured, every insurer licensed in this State issuing or delivering any policy or contract of bodily injury liability insurance, or of property damage liability insurance, covering liability arising from the ownership, maintenance or use of any motor vehicle shall provide on request of the insured, on payment of premium established by law for such coverage (1) to the named insured and, while resident of the same household, the spouse and relatives of the named insured while occupying ~~any~~ or through being struck by a motor vehicle; and (2) to persons occupying the insured motor vehicle, the following hospital, medical and disability benefit for each accident:

(a) Medical payments (accident insurance as defined in Article 2 (§ 38.1-2 et seq.) of Chapter 1) of Title 38.1) coverages incurred within one year after the date of the accident, up to two thousand dollars per person; ~~and~~

(b) If such person is usually engaged in a remunerative occupation, an amount equal to the loss of income incurred within one year after the date of the accident resulting from injuries received in such accident up to one hundred dollars per week during the period from the first work day lost as a result of the accident up to the date such person is able to return to his usual occupation and for a period not to exceed fifty-two weeks or any part thereof; and

(c) *The insured has the option of purchasing either or both of the coverages set forth in (a) and (b).*

CHAPTER 415

An Act to amend and reenact § 38.1-279.33, as amended, of the Code of Virginia, relating to rate standards for insurance.

[H 1634]

Approved March 24, 1977

Be it enacted by the General Assembly of Virginia:

1. That § 38.1-279.33, as amended, of the Code of Virginia is amended and reenacted as follows:

§ 38.1-279.33. Rate standards.—The following standards shall apply to the making and use of rates pertaining to all classes of insurance to which the provisions of this chapter are applicable:

(a) Rates shall not be excessive or inadequate, as herein defined, nor shall they be unfairly discriminatory. No rate shall be held to be excessive unless (1) such rate is unreasonably high for the insurance provided, and (2) a reasonable degree of competition does not exist in the area with respect to classification to which such rate is applicable, or such rate will have the effect of destroying competition or creating a monopoly. No rate shall be held inadequate unless (1) it is unreasonably low for the insurance provided, and (2) continued use of it would endanger solvency of the insurer, or unless (3) such rate is unreasonably low for the insurance provided and the use of such rate by the insurer using same has, or if continued, will have the effect of destroying competition or creating a monopoly.

(b) In determining whether rates comply with standards under subsection (a) due consideration shall be given to past and prospective loss experience within and outside this State, to conflagration or catastrophe hazards, to a reasonable margin for underwriting profit and contingencies, to dividends, savings or unabsorbed premium deposits allowed or returned by insurers to their policyholders or members or subscribers to past and prospective expenses both countrywide and those specially applicable to this State, to investment income earned or realized by insurers both from their unearned premium and loss reserve funds and to all relevant factors within and outside this State; and in the case of fire insurance rates consideration shall be given to the experience of the fire insurance business during a period of not less than the most recent five-year period for which such experience is available, and in the case of motor vehicle insurance as defined in § 38.1-21, consideration shall be given to all sums distributed by the State Corporation Commission from the Uninsured Motorists Fund in accordance with the provisions of §§ 38.1-379.1, 38.1-379.2 and 38.1-379.3 to the companies writing motor vehicle bodily injury liability and property damage liability insurance on motor vehicles registered in the State.

(c) As to the kinds of insurance to which this chapter applies, including insurance against contingent, consequential and indirect losses as defined in § 38.1-23, (A) the systems of expense provisions included in the rates for use by any insurer or group of insurers may differ from those of other insurers or groups of insurers to reflect

the requirements of the operating methods of any such insurer or group with respect to any kind of insurance, or with respect to any subdivision or combination thereof for which subdivision or combination separate expense provisions are applicable, and (B) risks may be grouped by classifications for the establishment of rates and minimum premiums. Classification rates may be modified to produce rates for individual risks in accordance with rating plans which establish standards for measuring variations in hazards or expense provisions, or both ; provided, that no insurer shall use information, which the Division of Motor Vehicles would be prohibited from furnishing such insurer pursuant to § 46.1-31 (B) (2) of the Code of Virginia, to produce rates for individual risks. Such standards may measure any difference among risks that can be demonstrated to have a probable effect upon losses or expenses. An insurer shall not charge points under the Safe Driver Insurance Plan to its insured as a result of a motor vehicle accident unless the accident was caused in whole or in part by the fault of its insured. An insured who feels he has been charged points without just cause may appeal the decision of his insurer to the Commissioner of Insurance in accordance with the review procedure contained in § 38.1-381.5 (h) of the Code of Virginia.

CHAPTER 188

An Act to amend the Code of Virginia by adding a section numbered 38.1-381.7, to require all motor vehicle insurers to provide their policyholders with rate classification statements.

[S 804]

Approved March 14, 1977

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 38.1-381.7 as follows:

§ 38.1-381.7. *Statement defining rate classifications to be provided by insurer to insured.*—Any insurer issuing policies of automobile insurance, as defined in § 38.1-381.5, shall provide the named insured at the time of issuance or renewal with a statement defining the rate classifications of the insured. Such a statement shall not be considered a part of the policy and shall not be deemed a warranty or representation by the insurer to the insured.

The Commissioner of Insurance shall approve the form of such statement prior to its use.

CHAPTER 621

An Act to amend the Code of Virginia by adding a section numbered 8.01-66.1, relating to recovery of small claim against insurer.

[H 1631]

Approved April 1, 1977

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 8.01-66.1 as follows:

§ 8.01-66.1. Action against insurer for arbitrary refusal of small claim.—A. Whenever any insurance company licensed in this Commonwealth to write insurance as defined in § 38.1-21 of the Code of Virginia denies, refuses or fails to pay to its insured a claim of one hundred fifty dollars or less in the excess of the deductible, if any, under the provisions of a policy of motor vehicle insurance issued by such company to such insured; and it is subsequently found by the trial judge of a court of proper jurisdiction that such denial, refusal or failure to pay was not made in good faith, such company shall be liable to such insured in an amount double the amount otherwise due and payable under the provisions of such insured's policy of motor vehicle insurance together with reasonable attorney's fees and expenses.

B. Notwithstanding the provisions of paragraph A. herein, whenever any insurance company licensed in this Commonwealth to write insurance as defined in § 38.1-21 denies, refuses or fails to pay to a third party claimant, on behalf of an insured to whom such company has issued a policy of motor vehicle liability insurance, a claim of one hundred fifty dollars or less made by such third party claimant; and if the trial judge of a court of proper jurisdiction finds that such insured is liable for such claim, such third party claimant shall have a cause of action against such insurance company; and if such judge finds that such denial, refusal or failure to pay was not made in good faith, such company, in addition to the liability assumed by such company under the provisions of such insured's policy of motor vehicle liability insurance, shall be liable to such third party claimant in an amount double the amount of the judgment awarded such third party claimant together with reasonable attorney's fees and expenses.

C. Notwithstanding the provisions of paragraphs A. and B. above, whenever any person who has paid a fee to the Division of Motor Vehicles to register an uninsured motor vehicle pursuant to § 46.1-167.1 or any person who has furnished proof of financial responsibility in lieu of obtaining a policy or policies of motor vehicle liability insurance pursuant to the provisions of Title 46.1 or any person who is required and has failed either to pay such fee or to furnish such proof pursuant to the provisions of Title 46.1 denies, refuses or fails to pay to a claimant a claim of one hundred fifty dollars or less made by such claimant as a result of a motor vehicle accident; and by the trial judge of a court of proper jurisdiction finds that such denial, refusal or failure to pay was not made in good faith, such person shall be liable to such claimant in an amount double the amount otherwise due and payable together with reasonable attorney's fees and expenses.

For the purposes of this paragraph C. "person" shall mean and include any natural person, firm, partnership, association or corporation.

CHAPTER 181

An Act to amend and reenact § 38.1-381.6 of the Code of Virginia, relating to discrimination in issuance of automobile insurance.

[S 691]

Approved *March 14, 1977*

Be it enacted by the General assembly of Virginia:

1. That § 38.1-381.6 of the Code of Virginia is amended and reenacted as follows:

§ 38.1-381.6. Discrimination in issuance of automobile insurance.—No insurer shall refuse to issue a policy of automobile insurance as defined in § 38.1-381.5 of the Code solely because of any one or more of the following factors: the age, sex, residence, race, color, creed, national origin, ancestry, marital status or lawful occupation (including the military service) of the person seeking such coverage; provided, however, that nothing contained herein shall be deemed to prohibit any insurer from limiting the issuance of policies of automobile insurance to those who are residents of this State nor shall it be deemed to prohibit any insurer from limiting the issuance of policies of automobile insurance only to persons engaging in or who have engaged in a particular profession or occupation, or who are members of a particular religious sect ; provided further, however, that nothing herein shall prohibit any insurer from setting rates for such insurance in accordance with relevant actuarial data.

As used in this section, the word "insurer" includes two or more insurers (i) under common management, or (ii) under common controlling ownership or under other common effective legal controls and in fact engaged in joint or cooperative underwriting, investment management, marketing, servicing or administration of their business and affairs as insurers.