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STATE CORPORATION COMMISSION
BUREAU OF INSURANCE

ADMINISTRATIVE LETTER
1987-14

TO: ALL COMPANIES LICENSED TO WRITE CERTAIN PROPERTY AND
CASUALTY LINES OF INSURANCE IN VIRGINIA

RE: IMPLEMENTATION OF SECTION 38.2-231 OF THE CODE OF VIRGINIA

DATE: October 6, 1987

Certain amendments to Section 38.2-231 of the Code of Virginia were enacted by the General Assembly effective July 1, 1987. Notice requirements for certain commercial liability policy reductions in coverage and certain increases in rate for such commercial liability policies were enacted, in addition to amendments in the commercial liability termination requirements previously enacted July 1, 1986. Due to numerous inquiries from insurers regarding these statutory changes, it was decided that the following guidelines for implementation of Section 38.2-231 might be useful for insurers in their compliance with Virginia law. Each insurer should, however, carefully review these statutory provisions instead of relying solely on the summary provided herein.

CANCELLATION AND NONRENEWAL

No cancellation or non-renewal of a policy providing personal injury or property damage liability coverage to a business entity shall be effective unless the insurer delivers or mails to the named insured a written notice of the cancellation or nonrenewal. The notice shall:

1. Be in a type size authorized by Section 38.2-311;
2. State the date (not less than 45 days after delivery or mailing, and not less than 15 days for nonpayment of premium) the cancellation or nonrenewal is to be effective;
3. State the specific reason for the cancellation or non-renewal; and
4. Advise the insured of the right to request, in writing, within 15 days of the receipt of the notice, a review by the Commissioner of Insurance.

Notice of non-renewal is not required when an insurer renews an insured in a newly filed program unless the insurer is changing from one insurer in a group to another insurer in the same group.

REDUCTION IN COVERAGE

The term "reduction in coverage" shall include, but not be limited to, any diminution in the scope of coverage, decrease in limits of liability, addition of exclusions, increase in deductibles, or reduction in the policy term which is initiated by an insurer. Reduction in coverage does not mean a reduction which was filed with and approved by the Commission and applicable to an entire line, classification, or subclassification of insurance.

No reduction in coverage initiated by an insurer of a policy providing personal injury or property damage liability coverage to a business entity, which is subject to Section 38.2-1912 (delayed effect of rates - 60 day prior filing rule) shall be effective unless the insurer delivers or mails to the named insured a written notice of the coverage reduction. (Section 38.2-1912 currently applies to medical malpractice liability policies only.)

The notice shall:

1. Be in a type size authorized by Section 38.2-311;
2. State the date (not less than 45 days after delivery or mailing) the reduction in coverage is to be effective;
3. State the nature of the reduction(s) in coverage;
4. State the specific reason(s) for the reduction(s) in coverage; and
5. Advise the insured of the right to request, in writing, within 15 days of receipt of the notice, a review by the Commissioner of Insurance.

If the insurer does not provide the required notice, coverage shall remain in effect until 45 days after proper notice is given unless the insured obtains replacement coverage or elects to cancel sooner. In this event, coverage shall cease under the prior policy on the effective date of the replacement policy or the elected cancellation date.

If the insured refuses the reduction in coverage, coverage for any period that extends beyond the expiration date will be under the prior policy's terms and conditions. If the insured accepts the reduction in coverage, the reduction will take effect upon the expiration of the prior policy.

Notice of reduction in coverage shall not be required if the insurer, after written demand, has not received, within 45 days after mailing or delivering the demand, sufficient information from the insured to provide the required notice, or if the required notice is waived in writing by the insured.

INCREASE IN RATE

No increase in the filed rate greater than 25% and initiated by the insurer of a policy providing personal injury or property damage liability coverage to a business

entity shall be effective unless the insurer delivers or mails to the Named Insured a written notice of the rate increase. The notice shall:

1. Be in a type size authorized by Section 38.2-311;
2. State the date (not less than 45 days after delivery or mailing) the increase in rate is to be effective;
3. States the amount of the rate increase (\$ or %);
4. States the specific reason(s) for the increase in rate; and
5. Advises the insured of the right to request, in writing, within 15 days of receipt of the notice, a review by the Commissioner of Insurance.

If the insurer does not provide notice in the manner required by statute, the rates in effect under the prior policy shall remain in effect until 45 days after proper notice is given unless the insured obtains replacement coverage or elects to cancel sooner. In this event, coverage shall cease under the prior policy on the effective date of the replacement policy or the elected cancellation date.

If the insured refuses the increase in rate, rates for any period that extends beyond the expiration date will be those under the prior policy. If the insured accepts the increase in rate, the increase will take effect upon the expiration of the prior policy.

Notice of the increase in rate shall not be required if the insurer, after written demand, has not received, within 45 days after mailing or delivering the demand, sufficient information from the insured to provide the required notice, or if the required notice is waived in writing by the insured.

MAILING REQUIREMENTS THAT APPLY TO ALL NOTICES

No notice mailed by an insurer in compliance with Section 38.2-231 shall be effective unless:

1. The notice is sent by registered or certified mail, or the insurer obtains a written receipt from the Postal Service showing the name and address stated in the policy;
2. The insurer retains a duplicate copy of the notice; and
3. The insurer certifies on the duplicate copy that it is a true copy of the notice mailed to the insured.

It should be noted that items 2 and 3 currently apply only to cancellations and non-renewal of a policy.

MOST FREQUENTLY ASKED QUESTIONS REGARDING SECTION 38.2-231

1. **Q. What is the definition of "filed rate"?**
 - A. Filed rate means any rate of premium, policy fee, membership fee, or any other charge made by an insurer for or in connection with a contract or policy of insurance which is required to be filed by the insurer with the State Corporation Commission. This includes increased limits factors, minimum premiums, company deviations, package modifications, and any other factors used to determine the policy rate(s). It also includes an initial filing of, or any changes in an already filed, experience and/or schedule rating plans. It does not include changes in an individual policyholders' rating factors based on experience or judgment as long as there have been no applicable changes in the plan.

The cumulative effect of all rating factors that have been initiated by the insurer should be used in determining if statutory notice is required. Policy changes that are requested by the insured that affect the rate do not need to be included.

2. **Q. What policy dates and lines of business are affected?**
 - A. All policies providing personal injury or property damage liability coverage to a business entity that are effective on or after 8/15/87 are subject to the notice provisions. This includes the business pursuits liability endorsements attached to personal lines policies, dwelling policies, and farmowners policies. Automobile and workers' compensation policies are not affected.

3. **Q. If the insured rejects the reduction in coverage or the increase in rate, what must the company do to comply with the Code?**
 - A. The company must continue coverage with the same forms and rates as on the expiring policy for the duration of the 45 day notification period, or until the expiration date of the expiring policy, whichever is later.

4. **Q. Does the notification requirement apply to "a" rates?**
 - A. No, "a" rates are not filed and do not come under the scope of the law.

5. **Q. Must the increase in rate be shown as a dollar or percent figure?**
 - A. Either form is acceptable, as long as the insured can reasonably understand the notice information.

6. Q. Subsections A and A1. of Section 38.2-231 state that cancellations, nonrenewals, reductions in coverage, and increases in rate shall not be effective unless "...the insurer delivers or mails to the named insured..." written notice (emphasis added). Subsections A2. and A3. also use the wording "mailed or delivered" in referring to the notices. Subsection B goes on to cite mailing requirements for notices mailed by the insurer; however, no requirements are cited for delivered notices. What rules apply?
- A. While the code cites no specific provisions, the insurer must be able to document that it delivered the proper notice to the insured within the required time frame.
7. Q. What is the definition of a business entity?
- A. A business entity may include an individual, partnership or corporation, county, city or town, board, commission or association controlled by the Commonwealth or other governmental authority.
8. Q. What happens if a company has filed new rates or forms that trigger the notice provision, but the company does not meet the 45 day notice requirement. Since the company is required to continue coverage under the terms of the prior contract, would the Bureau cite the company for using rates and forms that were not approved?
- A. The provisions of 38.2-231 are intended to protect the insured from certain rate increases and coverage decreases without appropriate and timely notification to the insured. The Bureau feels it would not be in the public interest to cite a carrier for this particular violation of the Code in the event the violation is solely due to an insurer's compliance with Section 38.2-231.
9. Q. Is notice of an increase in rate required of an insurer renewing insureds in newly filed programs, i.e. from the CLM GL program to the Simplified program?
- A. Yes. Unlike reductions in coverage, there is no statutory exemption for any increases in rate which are greater than 25%.
10. Q. What policy term is used in determining whether a rate increase notice is required?
- A. The rate(s) for the policy term immediately preceding the renewal policy is to be used for determining whether notice is required. Multi-year policies that are re-rated annually should use the latest annual term.

11. Q. The statute requires the insurer to provide the insured with the specific reason(s) for the reduction in coverage or the increase in rate. What constitutes a specific reason?
- A. Specific reasons for reduction in coverage or increase in rate may include terminology such as "rate filing of (date)" and "form revision of (date)".
12. Q. The insured is allowed to request a review of the insurer's action by the Commissioner of Insurance. What kind of review will be made?
- A. Review by the Commissioner means that the Bureau will verify that the notice requirements of the Code have been met.
13. Q. How long is an insurer required to maintain records of notices required by Section 38.2-231?
- A. Every insurer shall maintain for at least one year records of cancellations, refusals to renew, reductions in coverage and rate increases subject to 38.2-231 and copies of every notice or statement required by subsections A, A1 and B that it sends to any of its insureds.

Sincerely yours,



Steven T. Foster
Commissioner of Insurance

STF/kjc