

COMMONWEALTH OF VIRGINIA



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STATE CORPORATION COMMISSION
BUREAU OF INSURANCE

July 16, 1992

ADMINISTRATIVE LETTER
1992-12

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

RE: Legislation enacted by the 1992 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 1992 Session.

The effective date of these statutes is July 1, 1992 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 be 'S. T. Foster', written over a horizontal line.

Steven T. Foster
Commissioner of Insurance

STF/met
Attachment

(All Bills Effective July 1, 1992 Unless Otherwise Noted)

Life and Health Insurance

House Bill 181 (Senate Bill 113)

Life, accident and sickness insurance; insurable interests of charitable organizations.

Declares that a charitable organization as defined by § 501(c) of the U.S. Internal Revenue Code has an insurable interest in the life, health, and bodily safety of an individual whenever the latter (i) transfers ownership rights in an existing policy to that organization or (ii) consents to the issuance of a policy to that organization, and the organization is named as owner or beneficiary in the policy. This legislation thus validates a common income and estate tax planning device in which a donor gives the proceeds of a life insurance policy on his life to a charitable organization. The individual deducts the premium payments on the policies as charitable contributions for income tax purposes. When the individual dies and the policy proceeds are paid to the charity, the proceeds are excluded from the donor's taxable estate. This legislation was prompted by a recent Internal Revenue Service private letter ruling suggesting that states should expressly declare the insurable interests of charitable organizations vis-a-vis donations of insurance policy proceeds to eliminate potential confusion about the tax status of premium payments and proceeds. This bill responds to that suggestion and further states that it is simply declaratory of existing law.

House Bill 491

Accident and sickness insurance; assignment of benefits.

Permits a nonstock corporation, after its conversion to a domestic mutual insurer, to deny a policyholder the right to assign his accident and sickness benefit only in cases where such benefit is 80 percent or greater of covered charges.

House Bill 722

Insurance; credit life insurance and credit accident and sickness insurance.

Repeals Chapter 37 and adds Chapter 37.1 to Title 38.2 of the Code regarding credit life and credit accident and sickness insurance. Provides that initially the credit life monthly

outstanding balance rate will be \$.7519 per \$1,000 of outstanding indebtedness. The initial credit accident and sickness rate shall be based on a morbidity study performed by the Bureau of Insurance to achieve a fifty percent loss ratio. As of January 1, 1995, the rates for credit life and credit accident and sickness shall be adjusted to achieve a sixty percent loss ratio. The rates shall be adjusted thereafter on a triennial basis to achieve a sixty percent loss ratio. The bill also provides that refunds for prepayments must be made based on the actuarial method, as defined, for loans whose terms are in excess of sixty months. The bill provides that the Commission may use discretion in applying the provisions of this chapter if no specific charge is made to a debtor for the insurance. The bill also provides for additional disclosure in connection with the sale of this insurance.

House Bill 872

Health maintenance organizations; limited health care services plans.

Authorizes health maintenance organizations to offer limited health care services e.g., dental, pharmacy, vision care, and other such services. These services would be made available as supplemental coverage to those groups or individuals whose primary health care coverage plans exclude such services or provide only limited coverage of such services.

House Bill 1013

Health maintenance organizations.

Redefines "health care plan" within the chapter of Title 38.2 governing health maintenance organizations (§ 38.2-4300 et seq.). The bill provides that at least 90 percent of a plan's total cost of health care services shall consist of arranging for or providing health care services which, under the provisions of this legislation, include emergency services and services rendered by nonparticipating referral providers, as defined by the bill.

House Bill 1014

Health maintenance organizations; interest on claim proceeds.

Provides specific law in the Health Maintenance Organization Act which addresses the payment of interest on claim proceeds due

under a health care services plan. The provisions are almost exactly the same as the "interest on claim proceeds" provisions that apply to commercial insurers and Blue Cross/Blue Shield corporations, except the new provisions give the health maintenance organizations thirty calendar days to pay the claim before interest accrues, rather than the fifteen working days applicable to other insurers.

Senate Bill 96

Medicare supplement policies; Health Maintenance Organizations; regulations.

Conforms Virginia law governing Medicare supplement policies to the provisions of federal law under the Omnibus Budget Reconciliation Act of 1990. The bill amends the definition of "Medicare supplement policy" to include health maintenance organization subscription contracts as well as certificates under group contracts even if the group contracts are not issued in Virginia. The bill also permits the Commission to amend Virginia's Medicare supplement regulations in the future whenever necessary to conform them to federal standards established by the U.S. Department of Health and Human Services. Under the bill, the Commission is required to inform the appropriate standing committees of the General Assembly of such changes.

Senate Bill 505

Small employer market provisions.

SB 505 was introduced as the result of a study conducted by the State Corporation Commission's Bureau of Insurance for the Commission on Health Care for All Virginians.

The study report (Senate Document No. 9) recommended that certain market reforms be introduced in the small group market. Small group was defined as 2-49 employees. This bill defines "small employer market" as persons engaged in a business employing 2-49 employees. The bill applies to insurers, health service plans, health organizations and multiple employer arrangements (MEWAs). The bill includes definitions of the following terms: dependent, eligible employee, initial enrollment period, late enrollee and premium. The bill provides that a pre-existing conditions provision cannot extend beyond 12 months (18 months for a late enrollee). If the insured person was previously covered under a similar policy, they must receive credit towards a pre-existing conditions period under the new contract (*continuous coverage). The bill requires that policies be renewable at the option of the employer (*guaranteed renewability).

Coverage must be extended to all employees of the employer and all dependents (*anti-dumping provision).

The bill contains an exclusion from the requirement of a credit for a previous pre-existing conditions period for a nonstock corporation offering open enrollment pursuant to § 38.2-4216.1 (*Blues) until all carriers in the small group market are required to make available and guarantee issue policies in the small employer market.

The bill also creates § 38.2-3540.1 regarding claims experience for all group accident and sickness policies. The provision requires that, upon request, insurers provide a policyholder with records of their claims experience under the group policy. The record is to be made available to the policyholder promptly upon request made at least 60 days prior to the date the contract is amended or premiums due. The section does not require the disclosure of personal or privileged information about an individual protected under Chapter 6 of Title 38.2. (Insurance Information and Privacy Protection Act) or any other federal or state law or regulation. **The provisions of § 38.2-3540.1 are not effective until July 1, 1993.**

Financial Regulation

House Bill 335

Insurers and health maintenance organizations; deposit of securities with State Treasurer.

Requires insurers and health maintenance organizations conducting business in the Commonwealth to deposit securities (guaranteeing performance of their obligations to policyholders and plan enrollees, respectively) in book-entry form with the State Treasurer. Current law requires insurers and health maintenance organizations to deposit such securities, principally requiring that the securities be legal investments under the laws of the Commonwealth in the case of insurers, and, in the case of health maintenance organizations, that they be acceptable to the State Corporation Commission in an amount acceptable to the Commission. This bill will codify an administrative practice of the State Treasurer adopted in January 1991 requesting insurers to deposit securities in book-entry form. The administrative costs of maintaining bearer and registered securities are reportedly greater than the cost associated with book-entry securities. The former must be adequately safeguarded, insured, and administered, e.g., substituting securities, processing interest coupons, etc. These provisions will become effective in January 1993 for insurers and for health maintenance organizations with physical

securities in the custody of the State Treasurer. The bill also provides express statutory authorization for the State Treasurer's annual assessment levied on health maintenance organizations to defray the expense of administering the program. The provision will codify authority for assessments that health maintenance organizations are reportedly paying voluntarily.

House Bill 660

Insurance; modified guaranteed life and modified guaranteed annuity contracts.

Authorizes the issuance of modified guaranteed life and modified guaranteed annuity insurance contracts. The bill defines both to mean that the benefits are guaranteed if held for specified periods and nonforfeiture values are based upon a market-value adjustment formula if held for shorter periods. The bill provides for regulation of the investment of amounts received for these contracts and allows for separate accounts to be set up for these types of contracts. An insurer must be licensed to sell these types of contracts, and the bill sets forth general character and business criteria which the insurer must meet. Under the bill, the provisions of §§ 38.2-3220 through 38.2-3229 will not apply to modified guaranteed annuity contracts.

House Bill 755

Insurers and health maintenance organizations; protection against insolvency.

Requires that the securities deposited with the State Treasurer by every insurer and every health maintenance organization licensed to conduct business in the Commonwealth be held as a special fund in trust. The deposits are used to protect policyholders and enrollees in the event an insurer or health maintenance organization fails to meet its obligations incurred in the Commonwealth.

House Bill 760

Continuing care retirement facilities.

Requires a provider of continuing care pursuant to Chapter 49 (§ 38.2-4900 et seq.) of Title 38.2 to furnish, in its disclosure statement, information about the procedure a resident should follow when making a complaint. In addition, the bill prohibits retaliatory conduct against any resident for filing such complaint.

House Bill 1011

Health maintenance organizations; provider contracts.

Authorizes health maintenance organizations to use intermediary organizations in administering health care plans. Contracts between health maintenance organizations, intermediary organizations and health care providers must be kept on file for five years to facilitate review by the State Corporation Commission. Health maintenance organizations subscribers and enrollees are not liable for health care provider charges not paid by health maintenance organizations or intermediary organizations when the same are contractually obligated to do so. Moreover, the health care provider is prohibited from maintaining any civil action against subscribers or enrollees to receive the amounts unpaid. Any agreements to administer a health care plan between a health maintenance organization and an intermediary organization cannot be cancelled unless 60 days' advance notice is given. Similarly, health care providers' agreements with health maintenance organizations or intermediary organizations cannot be cancelled unless advance notice of 60 days is given. Finally, the bill eliminates the current requirement that health care provider contracts with health maintenance organizations be kept on file with the SCC. The bill requires instead that the health maintenance organizations provide a list of all providers with whom they have contracts and that the list be updated on a quarterly basis.

House Bill 1012

Insurance regulation; financial regulation of insurers.

Addresses the State Corporation Commission's (SCC) oversight of the solvency and soundness of Virginia's insurance industry. Many of the bill's provisions are based on model legislation of the National Association of Insurance Commissioners (NAIC). Sections 38.2-1300 through 38.2-1310.1 clarify standards for compiling and reporting annual statement data, valuing investments, and admitting assets. Sections 38.2-1317 through 38.2-1321.1 concern regulatory examinations. Sections 38.2-1322 through 38.2-1334 and §§ 38.2-4230 through 38.2-4234 concern holding companies. These provisions strengthen the fairness test by which affiliated transactions are judged, heighten the level of regulator scrutiny to be accorded extraordinary dividends, and provide for the application of a competitive standard when evaluating the merits of a proposed acquisition or merger. Sections 38.2-1400 through 38.2-1447 concern investments of insurance companies. Specific provisions are aimed at filling the gaps which have developed due to changes in industry and the surrounding financial and economic climates. For example,

provisions provide a better framework for handling mortgage pass-through securities and real estate. Sections 38.2-1846 through 38.2-1865 pertain to managing general agents and reinsurance intermediaries, and impose new licensing requirements for managing general agents and reinsurance intermediaries. Sections 38.2-3126 through 38.2-3144 comprise the standard valuation law for life insurers' reserves. The bill's provisions better integrate statutory and administrative requirements concerning actuarial opinions by focusing on the sufficiency of cash flow in the matching of assets and liabilities. Sections 38.2-5100 through 38.2-5115 affect risk retention and purchasing groups. Procedures which will enable identification and classification of risk retention and purchasing groups chartered in Virginia are clarified. The bill also makes technical and nonsubstantive changes to various provisions in the insurance title.

Senate Bill 194

**Virginia Life, Accident and Sickness Insurance
Guaranty Association.**

Expands the Guaranty Association's coverage of annuities to include those issued in connection with a structured settlement. The bill also expands coverage to include life insurance benefits payable to any person by an insurer.

Property and Casualty Insurance

House Bill 210

Replacement Cost Coverage

This bill adds a new subsection B to §38.2-2119. Fire insurance policies or policies of fire insurance in combination with other coverages which provide replacement cost coverage must permit the insured to make a claim for the actual cash value of the property without prejudicing the insured's right to later make a claim for the difference between the actual cash value and the full replacement cost of the property. Such claims must be made within six months of the latter of (i) the last date the insured received payment for the actual cash value, or (ii) the date of entry of a final order declaring the right of the insured to full replacement cost coverage.

House Bill 455

Appointment of Umpire

This bill amends §38.2-2121 which sets forth the requirements for requesting the judge of a circuit court to select an umpire to determine the amount of loss or damage sustained when two appraisers cannot agree on an umpire. Under current law, when appraisers fail or neglect to agree upon and select an umpire within a specified time, the judge must appoint one immediately. The amended language requires the judge to give all parties 21 days advance notice of his selection.

House Bill 493

Liability Coverage for Loaned or Leased Vehicles

This bill clarifies the intent of House Bill 1531 which was enacted in 1985. Under §38.2-2205 any valid and collectible insurance covering a person using a loaned or leased vehicle during the repairing or servicing of that person's vehicle will be primary, regardless of whether the servicing or repairing is done by the business which loans or leases the vehicle. This bill makes it clear that the shift in primary liability coverage to the customer's insurance policy will occur even if the loaned or leased vehicle is owned by a business other than the one repairing or servicing the vehicle.

House Bill 499

Birth Injury Fund Assessments

This bill adds a new subsection to §38.2-5020 which requires the State Corporation Commission to enter an order suspending the annual \$250 non-participating physician assessment if the Commission determines that the Birth-Related Neurological Injury Compensation Fund is actuarially sound. The bill calls for the Commission to reinstate the annual assessment in an amount up to \$250 if the assessment is required to maintain the Fund's actuarial soundness. The bill also exempts from the \$250 assessment any physician who is employed by the federal government and whose income from professional fees is less than 10% of the physician's annual salary.

House Bill 632 and House Bill 989

Unfair Settlement Practices

These bills add a new section to Chapter 5 (Unfair Trade Practices) making it unlawful for anyone to require or coerce an insured or claimant to use a specific replacement or repair facility or service, or the products of a specific manufacturer, as a prerequisite to settling or paying a claim.

House Bill 647

Notification of Title Insurance

This bill amends Chapter 46 (Title Insurance) by requiring a settlement agent to notify a purchaser of residential real estate that the purchaser may wish to obtain owner's title insurance with affirmative mechanics' lien coverage, if available, and to advise the purchaser of the general nature of such coverage. The purchaser's acceptance or rejection of coverage must be in writing. Notification must also include language that the value of subsequent improvements to the property may not be covered. Failure of the settlement agent to provide the notice, however, does not give rise to a cause of action.

House Bill 659

Certification Requirements

This bill amends §§38.2-231, 38.2-2113, and 38.2-2208 pertaining to the certification requirements on retained copies of notices of cancellations, non-renewals, reductions in coverage, and increases in rates. The insurer will no longer be required to endorse a certification on the retained copy of the notice that is sent to the insured and lienholder. Copies of the notices must still be retained by the insurer for at least one year, but "copy" is now defined to include photographs, microphotographs, photostats, microfilm, microcard, printouts or other reproductions of electronically stored data, or copies from optical disks, electronically transmitted facsimiles, or any other reproduction of an original from a process which forms a durable medium for its recording, storing, and reproducing.

House Bill 686 (Effective January 1, 1993)

Medical Expense Notice

This bill amends §38.2-2202 pertaining to the notice which must be given to insureds regarding medical expense and loss of income coverage. The changes in this bill make the notice consistent with the revisions made in §38.2-2201 last year.

House Bill 739

Workers' Compensation Self-Insurers

This bill requires the Workers' Compensation Commission to establish reasonable requirements and standards for approval of an employer as a self-insurer and to require proof of the solvency of such employer and the financial ability of the employer to meet its obligations and pay compensation. Standards for approval must include (i) the quality and amount of security deposits, bonds, or indemnity; (ii) the amount of advance payments and reserves required; (iii) the investment of such funds; and (iv) the form and content of financial information to be submitted by the employer and the frequency of such submissions. The Workers' Compensation Commission may request the Bureau of Insurance to assist it in establishing these standards for approval and certification.

House Bill 790

Limited Liability Companies

This bill amends §38.2-1837 by including within the definition of an insurance consultant a "limited liability company" which is defined in Title 13.1 as an entity that is an unincorporated association, without perpetual duration, having two or more members that is organized and existing under Chapter 12 of Title 13.1. It must also contain in its name the words "limited company," "limited liability company," "L.C.," or "L.L.C." §38.2-1838 is amended to require any individual who acts as an insurance consultant for a limited liability company to be licensed as an insurance consultant. §38.2-1841, which has to do with license renewal, termination, suspension, or revocation, is also amended to include licenses issued to limited liability companies.

House Bill 794

Omnibus Clause Exclusion

This bill amends §38.2-2204 which governs policies of insurance covering liability arising from the ownership, maintenance, or use of any motor vehicle, aircraft, or private pleasure watercraft. The bill allows an insurer to add an endorsement onto a policy excluding coverage which would inure to the benefit of the United States Government or any of its agencies or subdivisions under the provisions of the Federal Tort Claims Act, the Federal Drivers Act, and the District of Columbia Non-Liability Act.

With the implementation of H.B. 794, two private passenger automobile standard forms - "District of Columbia Employees Using Automobiles In Government Business" and "Federal Employees Using Automobiles In Government Business" will be updated and approved for use. These forms had previously been withdrawn by Administrative Order 10383 since there was a conflict between the standard forms and § 38.2-2204.

House Bill 838 (Effective January 1, 1993)

Salvage Vehicles and Non-Repairable Vehicles

This bill amends Title 46.2 (Motor Vehicle Code) by requiring an insurance company, which acquires a vehicle title as a result of a claim, to obtain either a salvage certificate or a non-repairable certificate from DMV. Each insurer must notify DMV of each late model vehicle (as defined in the code) which is titled in the Commonwealth of Virginia on which a claim has been paid if (i) the estimated cost of repair exceeds 75% of its actual cash value and (ii) the vehicle is to be retained by its owner. No such notification is required for a vehicle when a supplemental claim has been paid for the cost of repairs to the engine, transmission, or drive axle assembly if such components are replaced by components of like kind and quality.

House Bill 965

Home Protection Companies

This bill amends §38.2-2601 by exempting from Chapter 26 any home protection company that has a net worth of more than \$100 million. Such companies will no longer have to comply with the licensing requirements, unfair trade practices provisions, reserve requirements, or rate and form filing requirements of Chapter 26.

House Bill 972 and Senate Bill 462 (Effective June 1, 1992)

Mechanics' Lien Agents

These bills stipulate that no person may claim a mechanics' lien on a one or two family residential dwelling unless proper notice has first been given to a mechanics' lien agent. A mechanics' lien agent is defined as a person designated in writing by the owner of real estate, or a person authorized to act on behalf of the owners, who agrees in writing to act as the owner's designee for purposes of receiving notice of labor performed or materials furnished by subcontractors and suppliers. A mechanics' lien agent may be an attorney, a title company or its subsidiary, a title agent, or a bank or savings institution or service corporation, subsidiary or affiliate of such financial institution.

The bills also require an owner/developer or owner/contractor to provide the purchaser, at the time of settlement, with an affidavit stating that all subcontractors and suppliers have been paid in full or provide the purchaser with the names, addresses, and amounts payable to any person who has performed labor or furnished materials. Willful failure to provide such a statement or willful material misrepresentation with respect to such a statement which causes a monetary loss to a financial institution, title company, contractor, subcontractor, supplier, owner, mechanics' lien agent, or any other person or institution will result in a Class 5 felony.

Senate Bill 499

Birth Injury Fund Assessments

This bill amends §38.2-5020 by exempting from the \$250 annual assessment any physician whose active clinical practice is limited to providing health care services voluntarily and without compensation to any patient of any clinic which is organized in whole or in part for the delivery of health care services without charge as provided in Title 54.1 of the Code of Virginia.

Miscellaneous

House Bill 142

Insurance; sale of insurance by lending institutions.

Provides technical amendments in Title 38.2 necessitated by the enactment of HB 335 in 1991 authorizing lending institutions in

the Commonwealth to sell insurance. For example, the amendment to § 38.2-501 adds a definition of "lending institution."

House Bill 498 (Effective January 1, 1993)

Continuing Education for Agents

This bill adds a new article to Chapter 18 of Title 38.2 which sets forth continuing education requirements for agents on a biennial basis. Key portions of the bill include the following:

1. Agents with one license must receive 16 educational credits by December 31, starting in 1994 and every even numbered year thereafter. Those with more than one license must complete 24 hours of credits with a minimum of 8 credits for each license.
2. Self-study courses may qualify if a written test is passed.
3. An advisory board, including representatives of the insurance industry and the Bureau, will approve or disapprove courses and instructors, set fees, allow exceptions in the event of emergencies, etc. Please note that it will be the Advisory Board, and not the Bureau of Insurance that will have the responsibility for designing the continuing education program and for its administration. The Bureau's formal involvement does not commence until it is time to commence enforcement proceedings for non-compliance.
4. The Bureau of Insurance will discipline agents who do not earn the required credits, giving 30 days notice before terminating licenses for non-compliance and requiring a waiting period of 90 days and completion of a pre-licensing study course and licensing exam in order for each license to be re-issued.
5. The law will go into effect on January 1, 1993, in order to give the Bureau and the advisory board time for preparation.

The bill also makes certain exceptions to the continuing education requirements:

1. Consultants do not have to have an additional 8 hours of credit if they have an agent's license.
2. Agents who are at least 65 who have held a license for 20 consecutive years are exempt provided they have submitted a request for permanent exemption.
3. Those who have limited licenses, such as travel insurance, baggage insurance, etc., are exempt.

4. Non-resident agents whose state of residence accepts our continuing education requirements need to only show proof that they have met the requirements in their home states.

Senate Bill 98

Fiduciary Accounts

This bill amends §38.2-1813 by requiring all insurance agents and surplus lines brokers, on and after January 1, 1993, to maintain a separate fiduciary account for all premiums, return premiums, or other funds received by such agent or surplus lines broker with the exception of premium funds made payable to insurers or insureds. The bill stipulates that the fiduciary account may not be commingled or combined with other funds except for the purposes of advancing premiums, establishing reserves for the payment of return premiums, or establishing funds to maintain a minimum balance or to guarantee the adequacy of the account. The commission portion of any premiums deposited to the fiduciary account may be withdrawn at the agent's or broker's discretion. The bill does not require any agent who is a duly appointed agent of an insurer who has a written contract which provides for the remittance of funds to maintain the separate fiduciary account. However, such funds are required to be held separately from any personal or nonbusiness funds and must be reasonably ascertainable from the agent's books of accounts and records.