

COMMONWEALTH OF VIRGINIA

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STATE CORPORATION COMMISSION BUREAU OF INSURANCE

June 3, 1993

ADMINISTRATIVE LETTER 1993-13

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

RE: Legislation Enacted by the 1993 Session of the Virginia General Assembly

Attached are summaries of certain statutes enacted or amended and re-enacted by the Virginia General Assembly during the 1993 Session.

The effective date of these statutes is July 1, 1993, except as otherwise indicated in this letter.

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. It is neither a legal review and interpretation nor a full description of the legislative amendments made to insurance-related laws during the 1993 Session. Each organization is responsible for legal review of the statutes pertinent to its operations.

Sincerely yours,


Steven T. Foster
Commissioner of Insurance

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Attachment

(All Bills Effective July 1, 1993 Unless Otherwise Noted)

Life and Health Insurance

House Bill 1738

Insurance annuities

Amends §§ 38.2-106 and 38.2-107 to change the definitions of annuity and variable annuity. The bill expands the definition of annuity to permit the term "annuity" to include a contract under which a lump sum cash settlement is an alternative to the option of periodic payments. The term "variable annuity" is amended also to include agreements or contracts for annuities in which an optional lump sum cash settlement may vary according to investment experience.

House Bill 1773

Accident and sickness insurance; coverage of newborn children

Amends § 38.2-3411, which mandates coverage of newborn children. The bill clarifies that when coverage is extended to newborn children in accordance with the mandate, coverage for the child must be identical to coverage for the insured, and, regardless of whether the policy would otherwise provide coverage, must also include: 1) coverage for medically diagnosed congenital defects and birth abnormalities; and 2) coverage for inpatient and outpatient dental, oral surgical and orthodontic services that are medically necessary for the treatment of medically diagnosed cleft lip, cleft palate and ectodermal dysplasia, subject to any deductible, cost-sharing and policy maximum in the contract, provided that they are no more restrictive than for any injury or sickness covered under the contract.

House Bill 1952

Accident and sickness insurance; small employer market provisions

Amends § 38.2-3431 of the small employer market provisions and § 38.2-4319 of the health maintenance organizations (HMO) chapter. The bill amends the definition of eligible employee, deleting the requirement that the employee be included as an employee under a health benefit plan of the employer. The bill also amends § 38.2-4319 to clarify that HMOs are not required to offer coverage or accept applications for employees outside of the HMO's service area. House Bills 2057 and 2353 also address the small employer market.

House Bill 1982

Credit life, credit accident and sickness insurance; application, disclosure and readability

Amends § 38.2-3737 of the Credit Life, Accident and Sickness Insurance Chapter, dealing with the application or enrollment request, and § 38.2-3735.B, dealing with disclosure and readability, to provide that the above referenced sections do not apply to credit life or credit accident and sickness insurance policies which insure open-end monthly outstanding balance credit transactions if the following conditions are met:

1. The insurance is offered to the debtor after the loan or credit transaction has been approved by the creditor and has been in effect at least 25 days;
2. The solicitation for the insurance is by mail or telephone. The person making the solicitation may not condition the open-end credit upon purchase of the insurance;
3. The creditor makes available only one plan of credit life and one plan of credit accident and sickness insurance coverage to the debtor;
4. The debtor is provided written confirmation of the insurance coverage within 30 days of the effective date of the coverage. The effective date of the coverage is the date the solicitation is effective; and
5. The individual policy or certificate has a notice on it stating that in the first 30 days, the policyowner or certificateholder may return the policy or certificate to the insurer or agent with a written request for cancellation. The policy/certificate will be void and the insurer must refund any premium paid. The notice must be in at least 12-point type.

House Bill 2057

Accident and sickness insurance; small employer market

Amends § 38.2-3432 of the small employer article in the Accident and Sickness Insurance Chapter to provide that credit for a previously served preexisting conditions provision shall be granted whether or not the new coverage is provided by a different employer. The bill also provides that employers may not be excluded from coverage offered under this article solely because of the nature of the employer's business. House Bills 1952 and 2353 also address the small employer market.

House Bill 2257

Life insurance; prohibition of discrimination

Adds a new § 38.2-508.2 to the Unfair Trade Practices Chapter to prohibit an insurer or other "person" from refusing to issue or continue a life insurance policy solely because of an individual's race, color, religion, national origin or gender.

House Bill 2271

Accident and sickness insurance; coverage of dependent children

Amends § 38.2-3500 of the Accident and Sickness Insurance Policies Chapter to require that the definition of eligible family member include dependent children "without regard to whether such children reside in the same household as the policyowner" for individual contracts. The bill also amends § 38.2-3525 in Article 3, Group Accident and Sickness Insurance Policies, to clarify that coverage under group policies may be extended to cover dependent children without regard to whether the child resides in the same household as the certificateholder. The bill also amends §§ 38.2-4214 and 38.2-4319 to make the same changes applicable to health services plans and health maintenance organizations.

House Bill 2353

Accident and sickness insurance; small employer market

Amends §§ 38.2-3430, 38.2-3431 and 38.2-3432 and adds § 38.2-3233 to the Small Employer Market Article in the Accident and Sickness Insurance Chapter. The bill makes the article applicable to individual contracts if part of the premium is paid for by the small employer by wage adjustment or other means of payroll deduction is allowed. The bill also requires the guaranteed issue of the essential and standard health benefit plans to employers with less than 26 employees. Community rating of the standard and essential plans is required. Companies may only deviate plus or minus 20% from the community rate for factors relating to claim experience, health status and duration of coverage. The bill allows insurers to use age, gender and geographic area outside of the 20% limit. NOTE: This is not the NAIC Model. Effective April 1, 1994

House Bill 2404

Accident and sickness insurance; standardized claims forms

Adds § 38.2-322 to the chapter relating to provisions for insurance contracts. Also amends §§ 38.2-4214, 38.2-4319 and 38.2-4509 dealing with health services plans, HMOs, dental and optometric services plans, respectively. This bill requires insurers, HMOs, health services plans and optometric service plans to accept the HCFA-1500 claims form or its successor for services provided by physicians, chiropractors, optometrists, opticians, professional counselors, psychologists, clinical social workers, podiatrists, physical therapists, clinical nurse specialists, audiologists and speech pathologists. The UB-82 claims form or its successors must be accepted for hospital services. The American Dental Association form must be accepted for dental services by insurers, HMOs, health services plans or dental plans. This does not prohibit insurers, HMOs, health services plans or dental plans from accepting other claims forms. The forms required to be accepted may be modified to accommodate electronic processing. Insurers will still be able to use their own claims forms but must accept the standardized forms (HCFA-1500, UB-82 and ADA). Effective January 1, 1994

Senate Bill 602

Life insurance

Amends §§ 38.2-301, 38.2-302 and 38.2-3224 to allow more clearly and recognize the existence of corporate-owned life insurance ("COLI") and trust-owned life insurance ("TOLI"). COLI and TOLI plans are considered acceptable with regard to insurable interest requirements (§ 38.2-301) and may be issued on the lives of certain employees without a requirement that the employee make application therefor (§ 38.2-302), provided that the COLI or TOLI plan provides the employees with written notice that insurance has been purchased on their lives, the amount of such coverage, and to whom benefits are payable in the event the employees die. The bill also exempts the contracts issued to COLI and TOLI plans from certain requirements contained in § 38.2-3330 (Payment of Benefits), § 38.2-3331, subsection A (Requirement for Individual Certificates), § 38.2-3332 (Right to Individual Policy Upon Termination of Employment), § 38.2-3333 (Right to Individual Policy Upon Termination of Group Policy) and § 38.2-3334 (Death After Termination of Group Insurance).

Senate Bill 739

Accident and sickness insurance; unfair trade practices

Amends § 38.2-508 of the Unfair Trade Practices Chapter to provide that an insurer (including an HMO or health services plan) may not refuse to issue or renew an individual accident and sickness policy or contract providing coverage over and above any lifetime limit of a group accident and sickness policy solely because an individual is covered by a group accident and sickness insurance contract. Medical expenses covered by both individual and group coverage are to be paid first by the group coverage. The provisions of this amendment do not apply to policies or contracts issued or renewed pursuant to § 38.2-4216.1 (Open Enrollment).

Senate Bill 867

Accident and sickness insurance; coverage for mental health and substance abuse services

Repeals §§ 38.2-3412 and 38.2-3413 that separately mandated coverage for mental, emotional or nervous disorders and alcohol and drug dependence and creates a new § 38.2-3412.1 that mandates coverage for mental health and substance abuse services. The new provisions define the terms adult, alcohol or drug rehabilitation facility, child or adolescent, inpatient treatment, intermediate care facility, medication management visit, mental health services, mental health treatment center, outpatient treatment, partial hospitalization, and substance abuse services and treatment.

§ 38.2-3412.1 requires that individual and group accident and sickness policies and subscription contracts providing coverage on an expense incurred basis to a family member shall provide the following inpatient and partial hospitalization mental health and substance abuse services:

1. Treatment for an adult as an inpatient for at least 20 days per policy or calendar year.
2. Treatment for a child or adolescent for at least 25 days per policy or contract year.
3. Up to 10 days of inpatient benefit that may be converted, when medically necessary, at the option of the person or parent of a child or adolescent, to partial hospitalization. The conversion shall be at least 1.5 days of partial hospitalization for each inpatient day.

4. Limits on the inpatient and partial hospitalization coverage which are not to be more restrictive than for any other illness.

This coverage does not apply to short-term travel, accident only, limited or specified disease policies or Medicare supplement policies.

With regard to group contracts covering a family member on an expense incurred basis, the insured or subscriber shall provide the following outpatient coverage for mental health and substance abuse:

a. At least 20 visits for an adult, child or adolescent in each policy or contract year;

b. Limits that shall be no more restrictive than any other illness except the co-insurance factor shall be at least 50% after the first five visits;

c. Medication management visits which shall be treated as any other illness and shall not be counted as outpatient visits under this section.

NOTE: Senate Bill 867 was the result of a two year study and subsequent review and recommendation from the Special Advisory Commission on Mandated Health Insurance Benefits. The intent of the new law is to be cost-neutral when compared to the two laws being repealed.

Property and Casualty Insurance

House Bill 1426

Liability insurance; supplemental reports for certain lines or subclassifications of commercial liability insurance

Amends subsection B of § 38.2-1905.2. Supplemental report data, which the State Corporation Commission (Commission) requires to be provided by insurers for certain lines and subclassifications of commercial liability insurance, must be submitted in a "machine-readable" format unless otherwise prescribed by the Commission. Subsection B is also amended to ensure consistency between the data reported on the supplemental reports and the data reported on annual statements and insurance expense exhibits filed with the Commission.

House Bill 1697

Motor vehicle insurance; proof of financial responsibility

Allows a person who has moved out of state to Maryland who must still file an SR 22 in Virginia to file his or her proof of financial responsibility by showing that the vehicle is insured by the Maryland Automobile Insurance Fund, which is the Maryland assigned risk fund. The law currently requires a nonresident to show proof of financial responsibility with a licensed insurance company. Since the Maryland Automobile Insurance Fund is not licensed as an insurance company, a change in the Motor Vehicle Code is required. This change has been made to § 46.2-440.

House Bill 1737

Underground storage tanks

Amends Title 62.1 to allow operators of facilities who are unable to demonstrate financial responsibility to establish an insurance pool in accordance with § 62.1-44.34:12. The formation and operation of such pools are subject to approval by the Commission. The Commission will adopt appropriate rules governing these pools.

House Bill 1775

Workers' compensation; civil penalties

Amends §§ 65.2-805 and 65.2-902 of the Workers' Compensation Act to provide for civil penalties of not less than \$500 and not more than \$5,000, payable to the Uninsured Employer's Fund, in the event an employer fails to comply with the provisions of § 65.2-804. A failure by an employer to make a report required by the Workers' Compensation Commission (Commission) shall result in a penalty of not more than \$500. If the Commission finds that an employer willfully failed to make a report required by the Commission, a fine of not less than \$500 and not more than \$5,000 shall be assessed, payable to the Uninsured Employer's Fund.

House Bill 1776

Workers' compensation; independent medical examinations

Amends § 65.2-607 of the Workers' Compensation Act to provide that no employer may require an injured employee to submit to more than one independent medical examination by a physician or surgeon per medical specialty without the prior authorization of

the Workers' Compensation Commission based upon a showing of good cause or necessity.

House Bill 1806

Workers' compensation: venue

Amends § 65.2-702 of the Workers' Compensation Act as to the venue for a hearing before the Commission. Hearings are generally held in the city or county in which the injury occurred or in a contiguous city or county. This amendment gives the Workers' Compensation Commission the discretion to designate another city or county as the site for the hearing.

House Bill 1825

Motor vehicle insurance: underinsured motorist coverage

Amends § 38.2-2206 by removing the requirement that, in order to be entitled to underinsured motorist coverage, the insured must purchase uninsured motorist coverage at limits higher than the minimum financial responsibility limits (25/50/20) required in § 46.2-472. Under the current law, an insured has underinsured motorist coverage available to him only if he purchases limits higher than the minimum limits of financial responsibility required by § 46.2-472. This bill will allow an injured party to collect under his underinsured motorist coverage even if he has not purchased higher limits of uninsured motorist coverage.

House Bill 2060

Motor vehicle insurance: furnishing information to the Department of Motor Vehicles

Amends the Motor Vehicle Code by stating that liability insurance information relating to individually identified vehicles or persons which is supplied by insurers to DMV shall be privileged and shall not be subject to the Virginia Freedom of Information Act. This information is to be used to verify insurance for motor vehicles pursuant to § 46.2-706.

House Bill 2147

Title insurance risk rates

This bill was amended by the Governor to add a provision that the bill will not become effective unless reenacted by the 1994 Virginia General Assembly. If reenacted next year, it will amend

Chapter 46 of Title 38.2 of the Code of Virginia to make title insurance risk rates, as defined in § 38.2-4608, subject to "file and use" rate regulation.

House Bill 2175

Workers' compensation insurance; notice of coverage nonrenewal

Amends § 65.2-804 of the Workers' Compensation Act to provide that no policy of insurance shall be nonrenewed by an insurer or group self-insurance association issuing the policy unless thirty days' notice of nonrenewal has been given to the employer and the Workers' Compensation Commission. If an employer has obtained other insurance coverage and the Workers' Compensation Commission has received notice from the insurer assuming the risk, this provision does not apply.

House Bill 2237

Credit involuntary unemployment insurance

Creates a new definition of credit involuntary unemployment insurance which, at the option of the borrower, may be provided by a lender. Credit involuntary unemployment insurance is defined in § 38.2-122.1 to mean insurance on a debtor in connection with a specified loan or other credit transaction to provide payment to a creditor for the installment payments or other periodic payments becoming due while the debtor is involuntarily unemployed. Section 38.2-233 sets forth disclosure and readability requirements for this coverage.

Senate Bill 640

Fire insurance policies

Adds §38.2-2124 to require that any insurer issuing fire insurance policies, or fire insurance policies in combination with other coverages, offer as an option on both new and renewal policies coverage for the replacement or repair of properties in accordance with applicable ordinances or laws regulating construction, repair or demolition. This amendment will make policyholders aware that they may buy back coverage otherwise excluded from the policy, which will cover the additional cost to repair or replace property in accordance with applicable building codes.

Senate Bill 868

Marine insurance; property and casualty guaranty association

Amends § 38.2-1601 of the Property and Casualty Insurance Guaranty Association Act (Act) to provide that the provisions of the Act shall not apply to insurance of vessels or craft used primarily in a trade or business, their cargoes and marine builders' risk and marine protection and indemnity. This bill clarifies what types of ocean marine coverage will not be covered under the guaranty fund in case of an insurer insolvency. The current language excludes "ocean marine insurance," but the term "ocean marine insurance" is not defined in Title 38.2. The new language will allow private pleasure vessels to be covered under the Act.

Senate Bill 908

Workers' compensation insurance

Amends Title 38.2 to make workers' compensation and employers' liability rates subject to Chapter 19 of Title 38.2. Rates for insurance written through the workers' compensation assigned risk plan will still be regulated under the prior approval provisions of Chapter 20. As a result of this bill, the Commission will have the authority to approve or disapprove workers' compensation prospective loss costs and supplementary rate information filed by a rate service organization on behalf of its members, but each insurer will now be required to file its own expense data and final rates. Any insurer that chooses not to use the loss costs and supplementary rate information filed by a rate service organization will be subject to the delayed effect filing provisions of § 38.2-1912.

All insurers writing workers' compensation insurance will have to file supplemental report data showing their experience in the Commonwealth if the line is designated as potentially noncompetitive. Also every insurer will have to adhere to the uniform classification system, uniform experience rating plan and uniform statistical plan approved by the Commission.

The provision allowing the interchange of rating data, which is currently found under § 38.2-2011, has been added to Chapter 19. This provision will now apply to all rate service organizations subject to Chapter 19 and will allow for the exchange of rating information and experience data.

In Chapter 20, permission is given for insurers and rate service organizations participating in joint reinsurance pools to act in cooperation with each other. Also, a new provision is added which requires all licensed insurers writing workers'

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compensation insurance in Virginia to participate in the assigned risk plan. This had not previously been stipulated in the law.

Another provision in this bill amends Virginia Code § 65.2-823 to allow information on insureds in the assigned risk plan to be released to agents and insurers for the purpose of procuring coverage in the voluntary market. **Effective January 1, 1994**

Senate Bill 999

Motor vehicle insurance: Help Eliminate Automobile Theft Fund (HEAT)

Amends § 38.2-414 by clarifying that the HEAT Fund Program can use the funds collected to reward information leading to the arrest of persons who commit motor vehicle theft-related crimes. The revised language clarifies that such persons do not have to be convicted in order for the HEAT Fund to provide a reward for the information received.

Financial Regulation

House Bill 1396

Continuing care provider registration and disclosure

Amends § 38.2-4900 to broaden the definition of "continuing care." The present definition requires the continuing care agreement to make provision for board, lodging and nursing services. Under this amendment, the definition is broadened to include agreements which provide only lodging, provided that board and nursing services are made available under ancillary but contractually separate agreements.

House Bill 1733

Investments in subsidiary corporations

Amends §§ 38.2-1414 and 38.2-1427.3 concerning investments in subsidiary corporations. The amendments provide that on and after December 31, 1992, all investments in subsidiary corporations shall be classified and limited pursuant to provisions in § 38.2-1427.3, subject further to the admitted asset and surplus limitations imposed by a new subsection A.12 in § 38.2-1414. The amendments also provide that compliance with the limitations imposed by § 38.2-1427.3 may be determined for

pre-July 1, 1992 investments by use of a deemed December 31, 1992 date of investment. Effective March 4, 1993

House Bill 1746

Virginia Life, Accident and Sickness Insurance Guaranty Association Act

Amends § 38.2-1704 as to the maximum liabilities for which the Virginia Life, Accident and Sickness Insurance Guaranty Association (Association) shall be liable. As to any one life, regardless of the number of policies or contracts, the stated benefits are: \$300,000 in life insurance death benefits and \$100,000 in net cash surrender and net cash withdrawal values for life insurance; \$300,000 in health insurance benefits, including any net cash surrender and net cash withdrawal values; and \$100,000 in the present value of annuity benefits, including net cash surrender and net cash withdrawal values. The Association shall in no event be liable for more than \$300,000 in the aggregate with respect to any one individual.

House Bill 2133

Health maintenance organizations; nonparticipating referral providers

Amends § 38.2-4300, the definition of "nonparticipating referral provider", to allow an HMO's payments to such providers to exceed 5% of total health care costs provided that such excess payments are classed or treated as mere indemnification costs. By referring to the definition of "health care plan", the amendment requires that the excess be combined with and subjected to pre-existing limitations restricting an HMO's activities as an indemnity insurer. A technical amendment in the definition of "basic health care" hyphenates the term "out-of-area."

Senate Bill 634

Investments by domestic insurers in receivership

Amends § 38.2-1400 to address the special investment authority required by a receiver when acting to rehabilitate or liquidate an insurer otherwise subject to the investment limitations of Chapter 14 of Title 38.2. Effective March 5, 1993

Senate Bill 923

Financial regulation of insurers

Amends various sections of Title 38.2 to maintain the Bureau of Insurance's accreditation with the National Association of Insurance Commissioners (NAIC) and to ensure protection for Virginia policyholders. This proposal amends § 38.2-1306.2 to clarify that insurers' assets are to be valued in accordance with NAIC standards. Several sections in Article 5 of Chapter 13, dealing with insurance holding companies, are also amended to bring Virginia statutes in line with the NAIC Model Act and to address such issues as the use of third parties in an attempt to circumvent statutory approvals and prohibitions. A new article 7 is added to Chapter 13 dealing with producer-controlled property and casualty insurers, provisions which are specifically required to maintain NAIC Accreditation. Various sections of Title 38.2 are also amended to clarify that all the provisions of Articles 1, 2 and 4 of Chapter 13 dealing with annual statements and other reports, valuations and admissibility of assets, and examination procedures, will be applicable to HMOs, legal services plans and dental or optometric services plans. Section 38.2-136 is also amended to ensure that policyholders do not lose guaranty fund coverage as a result of their insurer's being involved in an assumption reinsurance transaction with an unlicensed company. The amendments require that insurers obtain the policyholder's consent when entering into an assumption reinsurance transaction and that the assuming insurer in such transactions be licensed in this Commonwealth. There are specific conditions stated in which consent and licensing may not be required to effect the transfer of risk.

MISCELLANEOUS

House Bill 1290

Property and Casualty Insurance Guaranty Association

Repeals § 38.2-1614 to eliminate the ability of property and casualty insurers to recover their guaranty fund contributions both through rates and premiums and through premium tax credits. This situation was inadvertently created with the passage of § 38.2-1611.1, which gave the property and casualty insurers the premium tax credits enjoyed by the life and health insurers.

House Bill 1819

Insurance agents; agents of burial societies

Amends § 38.2-1815 of the Agents Chapter of the Code of Virginia to exempt agents who write coverage for burial societies (companies licensed according to Chapter 40) from the requirement of a written examination if they write coverage of less than \$5,000. The bill also eliminates the possibility of exemption for agents acting solely for cooperative nonprofit life benefit companies (Chapter 38 companies).

House Bill 1857

Insurance agents; agency relationship and accounting for premiums

Amends § 38.2-1801, adding a new subsection B to ensure the protection of insureds in the event premium payments made by insureds to their agents are not remitted by the agents to the insurer or its designated representative. Payment of the premium to an agent or surplus lines broker shall be considered payment to the insurer, provided the insurer or its appointed agent has acknowledged coverage. A new subsection C has also been added to clarify that the insurer is liable for the return of the unearned premium due a premium finance company where payment and evidence of financing have been received by the insurer or its appointed agent.

The second amendment is to § 38.2-1813, which deals with reporting and accounting for premiums. This amendment clarifies that all funds, including premium funds that an agent receives on behalf of an insurance premium finance company, must be accounted for and paid to the premium finance company when due. "When due" is clarified to mean in the ordinary course of business.

House Bill 1882

Title insurance agencies and agents

Amends subsection A of § 38.2-4614 by removing from the anti-kickback provision the exemption currently allowed for federally insured lenders, holding companies to which they belong and their subsidiaries. A provision is also added to clarify that these entities may be licensed as title agents and may receive payments or commissions from the sale of title policies. A new definition of title insurance agency or agent is also added under the new section § 38.2-4601.1, which specifies the services a title agent must perform in order to receive a payment or commission in connection with the issuance of title insurance.