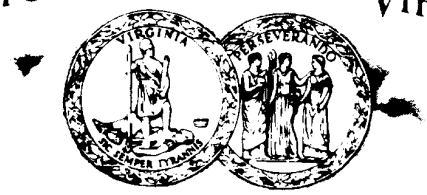
COMMONWEALTH OF VIRGINIA



STEVEN T. FOSTER
COMMISSIONER OF INSURANCE

Box 1157
RICHMOND, VA 23209
TELEPHONE: (804) 786-3741
TDD/VOICE: (804) 225-3806

STATE CORPORATION COMMISSION

BUREAU OF INSURANCE

December 15, 1992

ADMINISTRATIVE LETTER 1992- 25

TO: All Insurance Companies Licensed to Write Automobile Insurance in Virginia

RE: Assignment of Points Under Safe Driver Insurance Plans

It has come to the attention of the SCC Bureau of Insurance that a number of insurers writing private passenger automobile policies are failing to comply with Virginia Code Sections 38.2-610.A. and 38.2-1905 when applying accident and conviction surcharges.

Section 38.2-602 defines an "Adverse Underwriting Decision" among other things as "the charging of a higher rate on the basis of information that differs from that which the applicant or policyholder furnished." Section 38.2-610.A. mandates that the insurer give written notice in the event of an adverse underwriting decision. The notice must disclose the specific reason or reasons for the adverse underwriting decision or advise that the person may make written request for the reason or reasons. Furthermore, the written notice must provide a summary of the policyholder's rights as outlined in Sections 38.2-608 and 38.2-609.

Section 38.2-1905 prohibits an insurer from increasing the insured's premium or charging safe driver points for accidents unless the accident was caused wholly or partially by the named insured, a resident of the same household, or other customary operator. In addition, an insurer may not charge points where the operator causing the accident is a principal operator insured under a separate policy. When an insurer increases a premium or charges points due to a motor vehicle accident, the insurer is required to notify the named insured in writing and in the same notice advise the named insured that he may appeal the insurer's decision to the Commissioner of Insurance. **The right to review only applies to accident surcharges, not surcharges for convictions.**

It appears from recent complaint investigations that many insurers are not giving the required notices particularly on auto assigned risk policies. This is to make you aware that **Sections 38.2-610 and 38.2-1905 apply to private passenger automobile residual market policies as well as policies written in the voluntary market.** Any insurer violating these sections may be subjected to monetary penalty and/or suspension or revocation of its license to transact the business of insurance in Virginia.

Furthermore, as explained in Administrative Letter 1980-12, justification for an accident surcharge must be obtained prior to applying the surcharge rather than in response to the Commissioner's review. Insurers are expected to provide adequate information in their initial response to Bureau inquiries. In the absence of such information, we reserve the right to rule in the insured's favor. Any insurer charging points without investigating whether or not the insured was wholly or partially at fault is violating the provisions of Section 38.2-1905 and also may be subjected to the penalties mentioned above.

Questions concerning compliance with Sections 38.2-610 and 38.2-1905 should be directed to:

Consumer Services Section
Property and Casualty Division
Bureau of Insurance
Box 1157
Richmond, VA 23209

Sincerely,

Steven T. Foster
Commissioner of Insurance

STF/cro

AFFIDAVIT

Name of Company: _____

NAIC Number: _____

RE: Form Number(s)

_____ _____ _____

_____ _____ _____

_____ _____ _____

I, as an officer of the above-referenced insurer, hereby certify, under penalty of perjury, that:

1. The above-referenced insurer has reviewed Sections 38.2-1443.1 and 38.2-3113.1 of the Code of Virginia, as amended;

2. In the case of a foreign or alien insurer, the form(s) identified above have been filed with and approved by the insurance regulatory authority of the above-referenced insurer's state of domicile; and,

3. The forms identified above comply with the specific requirements of Section 38.2-3113.1, subsection F., of the Code of Virginia, as amended.

_____
Signature

_____ _____
Date Name

_____
Title

Notarial Acknowledgment

State of _____

County or City of _____

_____, being duly sworn according to law, deposes and says that he/she executed the above instrument and that the statements contained therein are true and correct to the best of his/her knowledge and belief.

Subscribed and sworn to before me this _____ day of _____, 19_____.

_____
Notary Public

(S E A L) My Commission Expires: _____