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Letter Withdrawn By Administrative Letter 2015-07

**STATE CORPORATION COMMISSION**
**BUREAU OF INSURANCE**

May 13, 1981

**Administrative Letter 1981-4**

TO: All Insurance Companies Licensed in Virginia and
All Surplus Lines Insurance Companies Approved in Virginia

RE: Virginia Insurance Information and Privacy Protection Act

**IMMEDIATE ATTENTION REQUIRED**

The Virginia Insurance Information and Privacy Protection Act was passed by the Virginia General Assembly during the 1981 Session and signed into law on March 20, 1981. It will take effect on January 1, 1982. Because a part of this Act duplicates the Adverse Underwriting Decision Law found in Section 38.1-52.14 of the Code of Virginia, the existing Adverse Underwriting Decision Law will be repealed effective January 1, 1982.

The substantive provisions of the Virginia Insurance Information and Privacy Protection Act and the NAIC Insurance Information and Privacy Protection Model Act as revised in December 1980 are virtually identical. I have enclosed a copy of the Virginia Act for your use.

The purpose of the Virginia Act is to strike a reasonable balance between (1) the legitimate needs of the insurance industry for information and (2) the public's need for fairness in insurance information practices and protection of personal privacy. It establishes standards for the collection, use and disclosure by insurance institutions, insurance agents, and insurance-support organizations of personal information gathered in connection with an insurance transaction. It establishes a regulatory mechanism that enables individuals to ascertain what personal information is being or has been collected about them and to have access to such information for the purpose of verifying or disputing its accuracy. Also, it limits the disclosure of information about individuals and enables them to obtain the reasons for any adverse underwriting decision.

It is essential that insurance companies doing business in Virginia give the most careful consideration to the Virginia Insurance Information and Privacy Protection Act. This Act requires actions by each company.

Scope and Definition

Sections 38.1-57.4 and 38.1-57.5 set forth respectively the scope and definitions applicable to this Act. These Sections are crucial to a proper understanding of this Act. They must be read very carefully. In particular, I call your attention to the following definitions: Adverse underwriting decision, Individual, Insurance transaction, Personal information, and Privileged information.

It is important to understand that this Act applies to the underwriting and servicing of insurance purchased primarily for personal, family or household needs rather than business or professional needs. The scope of this Act is not identical with the industry's common classification of personal lines and commercial lines of insurance.

Summary of Provisions

The substantive provisions of this Act are contained in Sections 38.1-57.6 through 38.1-57.16. They should be read very carefully. In general these Sections accomplish the following:

1. Limit the circumstances in which pre-text interviews can be utilized. (Section 38.1-57.6)

2. Requires either a notice of information practices or an abbreviated notice setting forth, among other things, that the individual has the right to obtain the full notice upon request. (Section 38.1-57.7)

3. Requires that questions on application or claim forms designed to collect information solely for marketing or research purposes must be so identified. (Section 38.1-57.8)

4. Sets standards for disclosure authorization forms used to collect information about individuals from third parties. (Section 38.1-57.9)

5. Requires that before an investigative consumer report is prepared, the individual must be informed of this and told that he or she has a right to be interviewed and to obtain a copy upon request. (Section 38.1-57.10)

6. Grants to individuals and certain other persons a general right of access to recorded personal information. (Section 38.1-57.11)

7. Grants to individuals and certain other persons the right to dispute the accuracy of personal information in a file and, if the information is not changed, the right to put in the file information the individual believes is accurate and correct. (Section 38.1-57.12)

8. Grants to individuals or certain other persons the right to learn the reason for any adverse underwriting decision, to know the information on which the decision was based, and to see and copy the information. (Section 38.1-57.13)

9. Prohibits an individual from being asked whether he or she were the subject of a previous adverse underwriting decision or previously

obtained insurance through a residual market mechanism without also being asked for the reason. (Section 38.1-57.14)

10. Prohibits an adverse underwriting decision from being based, in whole or in part, on the fact of a previous adverse underwriting decision, the fact that an individual previously obtained insurance through a residual market mechanism, or on information from certain types of insurance-support organizations. (Section 38.1-57.15)

11. Prohibits any personal or privileged information about an individual from being disclosed to another party unless the disclosure is with the written authorization of the individual or unless the disclosure is in one of the specifically enumerated types. (Section 38.1-57.16)

Other Provisions

There are a few other Sections that deserve specific mention. Section 38.1-57.24(A) gives to an individual the power to compel compliance with those Sections granting the rights of access and correction to information and the rights regarding adverse underwriting decisions. Paragraph B of this Section makes insurance institutions, agents, and insurance-support organizations liable for actual damages resulting from disclosures in violation of Section 38.1-57.16. The immunity provision in Section 38.1-57.25 is similar to the immunity provision in the Federal Fair Credit Reporting Act.

Finally, I call your attention to Section 38.1-57.21 which sets forth penalties for violations of the Act and of cease and desist orders issued by the State Corporation Commission.

Conclusion

The Virginia Insurance Information and Privacy Protection Act is long and complex. Nevertheless, with proper planning the requirements of the Act can be met without undue cost or inconvenience. Many of the insurance trade associations participated in developing the NAIC Model Act and have prepared sample forms and notices that companies may find helpful.

Please let me know of specific questions you have regarding the implementation of the Virginia Insurance Information and Privacy Protection Act.

Sincerely,

James W. Newman, Jr.

James W. Newman, Jr.
Commissioner of Insurance

JWNjr:dj
Enclosure

CHAPTER 389

*An Act to amend the Code of Virginia by adding in Chapter 1 of Title 38.1 an article numbered 6.1, consisting of sections numbered 38.1-57.2 through 38.1-57.28, and to repeal § 38.1-52.14 of the Code of Virginia, creating an Insurance Information and Privacy Protection Act; penalties.*

[S 252]

Approved March 20, 1981

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Chapter 1 of Title 38.1 an article numbered 6.1, consisting of sections numbered 38.1-57.2 through 38.1-57.28, as follows:

*Article 6.1.*

*Insurance Information and Privacy Protection Act.*

*§ 38.1-57.2. Short title.—This article may be cited as the Insurance Information and Privacy Protection Act and is hereinafter referred to as this Act.*

*§ 38.1-57.3. Purpose.—The purpose of this Act is to establish standards for the collection, use and disclosure of information gathered in connection with insurance transactions by insurance institutions, agents or insurance-support organizations; to maintain a balance between the need for information by those conducting the business of insurance and the public's need for fairness in insurance information practices, including the need to minimize intrusiveness; to establish a regulatory mechanism to enable natural persons to ascertain what information is being or has been collected about them in connection with insurance transactions and to have access to such information for the purpose of verifying or disputing its accuracy; to limit the disclosure of information collected in connection with insurance transactions; and to enable insurance applicants and policyholders to obtain the reasons for any adverse underwriting decision.*

*§ 38.1-57.4. Scope.—A. The obligations imposed by this Act shall apply to those insurance institutions, agents or insurance-support organizations which, on or after the effective date of this Act:*

*1. In the case of life or accident and sickness insurance:*

*a. Collect, receive or maintain information in connection with insurance transactions which pertains to natural persons who are residents of this Commonwealth; or*

*b. Engage in insurance transactions with applicants, individuals, or policyholders who are residents of this Commonwealth; and*

*2. In the case of property or casualty insurance:*

*a. Collect, receive or maintain information in connection with insurance transactions involving policies, contracts or certificates of insurance delivered, issued for delivery or renewed in this Commonwealth; or*

*b. Engage in insurance transactions involving policies, contracts or certificates of insurance delivered, issued for delivery or renewed in this Commonwealth.*

*B. The rights granted by this Act shall extend to:*

*1. In the case of life or accident and sickness insurance, the following persons who are residents of this Commonwealth:*

*a. Natural persons who are the subject of information collected, received or maintained in connection with insurance transactions; and*

*b. Applicants, individuals or policyholders who engage in or seek to engage in insurance transactions; and*

*2. In the case of property or casualty insurance, the following persons:*

*a. Natural persons who are the subject of information collected, received or maintained in connection with insurance transactions involving policies, contracts or certificates of insurance delivered, issued for delivery or renewed in this Commonwealth; and*

*b. Applicants, individuals, or policyholders who engage in or seek to engage in insurance transactions involving policies, contracts or certificates of insurance delivered, issued for delivery or renewed in this Commonwealth.*

*C. For purposes of this section, a person shall be considered a resident of this Commonwealth if the person's last known mailing address, as shown in the records of the insurance institution, agent or insurance-support organization, is located in this Commonwealth.*

*D. Notwithstanding subsections A. and B. herein, this Act shall not apply to information collected from the public records of a governmental authority and maintained by an insurance institution or its representatives for the purpose of insuring the title to*

*real property located in this Commonwealth.*

*§ 38.1-57.5. Definitions.—As used in this Act:*

*1. "Adverse underwriting decision" means:*

*a. Any of the following actions with respect to insurance transactions involving insurance coverage which is individually underwritten:*

*(1) A declination of insurance coverage;*

*(2) A termination of insurance coverage;*

*(3) Failure of an agent to apply for insurance coverage with a specific insurance institution which an agent represents and which is requested by an applicant;*

*(4) In the case of a property or casualty insurance coverage:*

*(a) placement by an insurance institution or agent of a risk with a residual market mechanism or an unauthorized insurer, or*

*(b) the charging of a higher rate on the basis of information which differs from that which the applicant or policyholder furnished; or*

*(5) In the case of a life or accident and sickness insurance coverage, an offer to insure at higher than standard rates.*

*(b) Notwithstanding paragraph a. of this subsection the following actions shall not be considered adverse underwriting decisions, but the insurance institution or agent responsible for their occurrence shall nevertheless provide the applicant or policyholder with the specific reason or reasons for their occurrence:*

*(1) The termination of an individual policy form on a class or statewide basis;*

*(2) A declination of insurance coverage solely because such coverage is not available on a class or statewide basis;*

*(3) The rescission of a policy.*

*2. "Affiliate" or "affiliated" means a person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with another person.*

*3. "Agent" shall have the meaning as set forth in § 38.1-327.1 and shall include surplus lines brokers, salesmen or representatives of a medical, surgical, hospital, dental, or optometric service plan, and salesmen or representatives of a health maintenance organization.*

*4. "Applicant" means any person who seeks to contract for insurance coverage other than a person seeking group insurance that is not individually underwritten.*

*5. "Consumer report" means any written, oral, or other communication of information bearing on a natural person's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics or mode of living which is used or expected to be used in connection with an insurance transaction.*

*6. "Consumer reporting agency" means any person who:*

*a. regularly engages, in whole or in part, in the practice of assembling or preparing consumer reports for a monetary fee;*

*b. obtains information primarily from sources other than insurance institutions; and*

*c. furnishes consumer reports to other persons.*

*7. "Control," including the terms "controlled by" or "under common control with," means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person.*

*8. "Declination of insurance coverage" means a denial, in whole or in part, by an insurance institution or agent of requested insurance coverage.*

*9. "Individual" means any natural person who:*

*a. In the case of property or casualty insurance, is a past, present, or proposed named insured or certificateholder;*

*b. In the case of life or accident and sickness insurance, is a past, present, or proposed principal insured or certificateholder;*

*c. Is a past, present or proposed policyowner;*

*d. Is a past or present applicant;*

*e. Is a past or present claimant; or*

*f. Derived, derives, or is proposed to derive insurance coverage under an insurance policy or certificate subject to this Act.*

*10. "Institutional source" means any person or governmental entity that provides information about an individual to an agent, insurance institution or insurance-support organization, other than:*

*a. An agent;*

*b. The individual who is the subject of the information; or*

*c. A natural person acting in a personal capacity rather than in a business or professional capacity.*

*11. "Insurance institution" means any corporation, association, partnership, reciprocal exchange, inter-insurer, Lloyd's insurer, fraternal benefit society, or other person engaged in the business of insurance, including health maintenance organizations and medical, surgical, hospital, dental, and optometric service plans. "Insurance institution" shall not include agents or insurance-support organizations.*

*12. "Insurance-support organization" means any person who regularly engages, in whole or in part, in the practice of assembling or collecting information about natural persons for the primary purpose of providing the information to an insurance institution or agent for insurance transactions, including: (i) The furnishing of consumer reports or investigative consumer reports to an insurance institution or agent for use in connection with an insurance transaction; or (ii) The collection of personal information from insurance institutions, agents or other insurance-support organizations for the purpose of detecting or preventing fraud, material misrepresentation or material nondisclosure in connection with insurance underwriting or insurance claim activity;*
*however, the following persons shall not be considered "insurance-support organizations" for purposes of this Act: agents, governmental institutions, insurance institutions, medical-care institutions and medical professionals.*

*13. "Insurance transaction" means any transaction involving insurance primarily for personal, family, or household needs rather than business or professional needs which entails:*

*a. The determination of an individual's eligibility for an insurance coverage, benefit or payment; or*

*b. The servicing of an insurance application, policy, contract, or certificate.*

*14. "Investigative consumer report" means a consumer report or portion thereof in which information about a natural person's character, general reputation, personal characteristics, or mode of living is obtained through personal interviews with the person's neighbors, friends, associates, acquaintances or others who may have knowledge concerning such items of information.*

*15. "Life insurance" includes annuities.*

*16. "Medical-care institution" means any facility or institution that is licensed to provide health care services to natural persons, including but not limited to, hospitals, skilled nursing facilities, home-health agencies, medical clinics, rehabilitation agencies, and public-health agencies or health-maintenance organizations.*

*17. "Medical professional" means any person licensed or certified to provide health care services to natural persons, including but not limited to, a physician, dentist, nurse, chiropractor, optometrist, physical or occupational therapist, psychiatric social worker, clinical dietitian, or clinical psychologist, pharmacist, or speech therapist.*

*18. "Medical-record information" means personal information which:*

*a. Relates to an individual's physical or mental condition, medical history, or medical treatment; and*

*b. Is obtained from a medical professional or medical-care institution, from the individual, or from the individual's spouse, parent, or legal guardian.*

*19. "Personal information" means any individually identifiable information gathered in connection with an insurance transaction from which judgments can be made about an individual's character, habits, avocations, finances, occupation, general reputation, credit, health, or any other personal characteristics. "Personal information" includes an individual's name and address and "medical-record information," but does not include "privileged information."*

*20. "Policyholder" means any person who:*

*a. In the case of individual property or casualty insurance, is a present named insured;*

*b. In the case of individual life or accident and sickness insurance, is a present policyowner; or*

*c. In the case of group insurance which is individually underwritten, is a present group certificateholder.*

*21. "Pretext interview" means an interview whereby a person, in an attempt to obtain information about a natural person, performs one or more of the following acts:*

*a. Pretends to be someone he or she is not;*

*b. Pretends to represent a person he or she is not in fact representing;*

*c. Misrepresents the true purpose of the interview; or*

*d. Refuses to identify himself or herself upon request.*

*22. "Privileged information" means any individually identifiable information that (i)*

*relates to a claim for insurance benefits or a civil or criminal proceeding involving an individual, and (ii) is collected in connection with or in reasonable anticipation of a claim for insurance benefits or civil or criminal proceeding involving an individual; however, information otherwise meeting the requirements of this subsection shall nevertheless be considered "personal information" under this Act if it is disclosed in violation of § 38.1-57.16 of this Act.*

*23. "Residual market mechanism" means an association, organization or other entity defined, described or provided for in § 38.1-264 (Virginia Automobile Insurance Plan) or in Chapter 19 (§ 38.1-746 et seq.) of Title 38.1 (Virginia Property Insurance Association).*

*24. "Termination of insurance coverage" or "termination of an insurance policy" means either a cancellation or nonrenewal of an insurance policy, in whole or in part, for any reason other than the failure to pay a premium as required by the policy.*

*25. "Unauthorized insurer" means an insurance institution that has not been granted a license by the Commission to transact the business of insurance in Virginia.*

*§ 38.1-57.6. Pretext interviews.—No insurance institution, agent, or insurance-support organization shall use or authorize the use of pretext interviews to obtain information in connection with an insurance transaction; however, a pretext interview may be undertaken to obtain information from a person or institution that does not have a generally or statutorily recognized privileged relationship with the person about whom the information relates for the purpose of investigating a claim where, based upon specific information available for review by the Commission, there is a reasonable basis for suspecting criminal activity, fraud, material misrepresentation, or material nondisclosure in connection with the claim.*

*§ 38.1-57.7. Notice of insurance information practices.—A. An insurance institution or agent shall provide a notice of information practices to all applicants or policyholders in connection with insurance transactions as provided herein:*

*1. In the case of an application for insurance a notice shall be provided no later than:*

*a. At the time of the delivery of the insurance policy or certificate when personal information is collected only from the applicant or from public records, or*

*b. At the time the collection of personal information is initiated when personal information is collected from a source other than the applicant or public records;*

*2. In the case of a policy renewal, a notice shall be provided no later than the policy renewal date, except that no notice shall be required in connection with a policy renewal if:*

*a. Personal information is collected only from the policyholder or from public records, or*

*b. A notice meeting the requirements of this section has been given within the previous twenty-four months; or*

*3. In the case of a policy reinstatement or change in insurance benefits, a notice shall be provided no later than the time a request for a policy reinstatement or change in insurance benefits is received by the insurance institution, except that no notice shall be required if personal information is collected only from the policyholder or from public records.*

*B. The notice required by subsection A. herein shall be in writing and shall state:*

*1. Whether personal information may be collected from persons other than the individual or individuals proposed for coverage;*

*2. The types of personal information that may be collected and the types of sources and investigative techniques that may be used to collect such information;*

*3. The types of disclosures identified in subsections 2., 3., 4., 5., 6., 9., 11., 12., and 14. of § 38.1-57.16 and the circumstances under which such disclosures may be made without prior authorization; however, only those circumstances need be described which occur with such frequency as to indicate a general business practice;*

*4. A description of the rights established under §§ 38.1-57.11 and 38.1-57.12 and the manner in which such rights may be exercised; and*

*5. That information obtained from a report prepared by an insurance-support organizaton may be retained by the insurance-support organization and disclosed to other persons; and*

*C. In lieu of the notice prescribed in subsection B. of this section the insurance institution or agent may provide an abbreviated notice informing the applicant or policyholder that:*

*1. Personal information may be collected from persons other than the individual or individuals proposed for coverage;*

*2. Such information as well as other personal or privileged information subsequently collected by the insurance institution or agent, in certain circumstances, may be disclosed*

*to third parties without authorization;*

*3. A right of access and correction exists with respect to all personal information collected; and*

*4. The notice prescribed in subsection B. of this section will be furnished to the applicant or policyholder upon request.*

*D. The obligations imposed by this section upon an insurance institution or agent may be satisfied by another insurance institution or agent authorized to act on its behalf.*

*§ 38.1-57.8. Marketing and research surveys.—An insurance institution or agent shall clearly specify those questions designed to obtain information solely for marketing or research purposes from an individual in connection with an insurance transaction.*

*§ 38.1-57.9. Content of disclosure authorization forms.—Notwithstanding any other provision of law of this Commonwealth, no insurance institution, agent, or insurance-support organization shall utilize as its disclosure authorization form in connection with insurance transactions involving insurance policies or contracts issued after January one, nineteen hundred eighty-two, a form or statement which authorizes the disclosure of personal or privileged information about an individual to the insurance institution, agent, or insurance-support organization unless the form or statement:*

*1. Is written in plain language;*

*2. Is dated;*

*3. Specifies the types of persons authorized to disclose information about the individual;*

*4. Specifies the nature of the information authorized to be disclosed;*

*5. Names the insurance institution or agent and identifies by generic reference representatives of the insurance institution to whom the individual is authorizing information to be disclosed;*

*6. Specifies the purposes for which the information is collected;*

*7. Specifies the length of time such authorization shall remain valid, which shall be no longer than:*

*a. In the case of authorizations signed for the purpose of collecting information in connection with an application for an insurance policy, a policy reinstatement, or a request for change in policy benefits:*

*(1) thirty months from the date the authorization is signed if the application or request involves life, health, or disability insurance; or*

*(2) one year from the date the authorization is signed if the application or request involves property or casualty insurance;*

*b. In the case of authorizations signed for the purpose of collecting information in connection with a claim for benefits under an insurance policy:*

*(1) the term of coverage of the policy if the claim is for a health insurance benefit; or*

*(2) the duration of the claim if the claim is not for a health insurance benefit; and*

*8. Advises the individual or a person authorized to act on behalf of the individual that the individual or the individual's authorized representative is entitled to receive a copy of the authorization form.*

*§ 38.1-57.10. Investigative consumer reports.—A. No insurance institution, agent, or insurance-support organization may prepare or request an investigative consumer report about an individual in connection with an insurance transaction involving an application for insurance, a policy renewal, a policy reinstatement or a change in insurance benefits unless the insurance institution or agent informs the individual:*

*1. That he may request to be interviewed in connection with the preparation of the investigative consumer report; and*

*2. That upon a request pursuant to § 38.1-57.11, he is entitled to receive a copy of the investigative consumer report.*

*B. If an investigative consumer report is to be prepared by an insurance institution or agent, the insurance institution or agent shall institute reasonable procedures to conduct a personal interview requested by an individual.*

*C. If an investigative consumer report is to be prepared by an insurance-support organization, the insurance institution or agent desiring such report shall inform the insurance-support organization whether a personal interview has been requested by the individual. The insurance-support organization shall institute reasonable procedures to conduct such interviews, if requested.*

*§ 38.1-57.11. Access to recorded personal information.—A. If any individual, after proper identification, submits a written request to an insurance institution, agent, or insurance-support organization for access to recorded personal information about the individual which is reasonably described by the individual and reasonably locatable and retrievable by the insurance institution, agent, or insurance-support organization, the*

*insurance institution, agent, or insurance-support organization shall within thirty business days from the date such request is received:*

*1. Inform the individual of the nature and substance of such recorded personal information in writing, by telephone, or by other oral communication, whichever the insurance institution, agent, or insurance-support organization prefers;*

*2. Permit the individual to see and copy, in person, such recorded personal information pertaining to him or to obtain a copy of such recorded personal information by mail, whichever the individual prefers, unless such recorded personal information is in coded form, in which case an accurate translation in plain language shall be provided in writing;*

*3. Disclose to the individual the identity, if recorded, of those persons to whom the insurance institution, agent, or insurance-support organization has disclosed such personal information within two years prior to such request, and if the identity is not recorded, the names of those insurance institutions, agents, insurance-support organizations or other persons to whom such information is normally disclosed; and*

*4. Provide the individual with a summary of the procedures by which he may request correction, amendment, or deletion of recorded personal information.*

*B. Any personal information provided pursuant to subsection A. of this section shall identify the source of the information if such source is an institutional source.*

*C. Medical-record information supplied by a medical-care institution or medical professional and requested under subsection A., together with the identity of the medical professional or medical care institution which provided such information, shall be supplied either directly to the individual or to a medical professional designated by the individual and licensed to provide medical care with respect to the condition to which the information relates, whichever the insurance institution, agent or insurance-support organization prefers. If it elects to disclose the information to a medical professional designated by the individual, the insurance institution, agent or insurance-support organization shall notify the individual, at the time of the disclosure, that it has provided the information to the medical professional.*

*D. Except for personal information provided under § 38.1-57.13, an insurance institution, agent, or insurance-support organization may charge a reasonable fee to cover the costs incurred in providing a copy of recorded personal information to individuals.*

*E. The obligations imposed by this section upon an insurance institution or agent may be satisfied by another insurance institution or agent authorized to act on its behalf. With respect to the copying and disclosure of recorded personal information pursuant to a request under subsection A. of this section, an insurance institution, agent, or insurance-support organization may make arrangements with an insurance-support organization or a consumer reporting agency to copy and disclose recorded personal information on its behalf.*

*F. The rights granted to individuals in this section shall extend to all natural persons to the extent information about them is collected and maintained by an insurance institution, agent or insurance-support organization in connection with an insurance transaction. The rights granted to all natural persons by this subsection shall not extend to information about them that relates to and is collected in connection with or in reasonable anticipation of a claim or civil or criminal proceeding involving them.*

*G. For purposes of this section, the term "insurance-support organization" does not include "consumer reporting agency."*

*§ 38.1-57.12. Correction, amendment, or deletion of recorded personal information.—A. Within thirty business days from the date of receipt of a written request from an individual to correct, amend, or delete any recorded personal information about the individual within its possession, an insurance institution, agent, or insurance-support organization shall either:*

*1. Correct, amend, or delete the portion of the recorded personal information in dispute; or*

*2. Notify the individual of:*

*a. Its refusal to make such correction, amendment, or deletion;*

*b. The reasons for the refusal; and*

*c. The individual's right to file a statement as provided in subsection C. of this section.*

*B. If the insurance institution, agent, or insurance-support organization corrects, amends, or deletes recorded personal information in accordance with paragraph 1. of subsection A. of this section, the insurance institution, agent, or insurance-support organization shall so notify the individual in writing and furnish the correction, amendment, or fact of deletion to:*

*1. Any person specifically designated by the individual who, within the preceding two years, may have received such recorded personal information;*

*2. Any insurance-support organization whose primary source of personal information is insurance institutions if the insurance-support organization has systematically received such recorded personal information from the insurance institution within the preceding seven years. The correction, amendment, or fact of deletion need not be furnished if the insurance-support organization no longer maintains recorded personal information about the individual; and*

*3. Any insurance-support organization that furnished the personal information that has been corrected, amended, or deleted.*

*C. Whenever an individual disagrees with an insurance institution's, agent's, or insurance-support organization's refusal to correct, amend, or delete recorded personal information, the individual shall be permitted to file with the insurance institution, agent, or insurance-support organization:*

*1. A concise statement setting forth what the individual thinks is the correct, relevant, or fair information; and*

*2. A concise statement of the reasons why the individual disagrees with the insurance institution's, agent's, or insurance-support organization's refusal to correct, amend, or delete recorded personal information.*

*D. In the event an individual files either statement as described in subsection C. of this section, the insurance institution, agent, or support organization shall:*

*1. File the statement with the disputed personal information and provide a means by which anyone reviewing the disputed personal information will be made aware of the individual's statement and have access to it; and*

*2. In any subsequent disclosure by the insurance institution, agent, or support organization of the recorded personal information that is the subject of disagreement, clearly identify the matter or matters in dispute and provide the individual's statement along with the recorded personal information being disclosed; and*

*3. Furnish the statement to the persons and in the manner specified in subsection B. of this section.*

*E. The rights granted to individuals in this section shall extend to all natural persons to the extent information about them is collected and maintained by an insurance institution, agent, or insurance-support organization in connection with an insurance transaction. The rights granted to all natural persons by this subsection shall not extend to information about them that relates to and is collected in connection with or in reasonable anticipation of a claim or civil or criminal proceeding involving them.*

*F. For purposes of this section, the term "insurance-support organization" does not include "consumer reporting agency."*

*§ 38.1-57.13. Reasons for adverse underwriting decisions.—A. In the event of an adverse underwriting decision, including those which involve policies referred to in paragraph (1) of subsection (c) of § 38.1-371.2 and in paragraph (3) of subsection (f) of § 38.1-381.5, the insurance institution or agent responsible for the decision shall give a written notice in a form approved by the commissioner of insurance which:*

*1. Either provides the applicant, policyholder, or individual proposed for coverage with the specific reason or reasons for the adverse underwriting decision in writing or advises such person that upon written request he may receive the specific reason or reasons in writing; and*

*2. Provides the applicant, policyholder, or individual proposed for coverage with a summary of the rights established under subsection B. of this section and §§ 38.1-57.11 and 38.1-57.12.*

*B. Upon receipt of a written request within ninety business days from the date of the mailing of notice or other communication of an adverse underwriting decision to an applicant, policyholder or individual proposed for coverage, the insurance institution or agent shall furnish to such person within twenty-one business days from the date of receipt of such written request:*

*1. The specific reason or reasons for the adverse underwriting decision, in writing, if such information was not initially furnished in writing pursuant to paragraph 1. of subsection A. of this section;*

*2. The specific items of personal and privileged informaton that support those reasons; provided, however:*

*a. The insurance institution or agent shall not be required to furnish specific items of privileged information if it has a reasonable suspicion, based upon specific information available for review by the Commission, that the applicant, policyholder, or individual proposed for coverage has engaged in criminal activity, fraud, material misrepresentation, or material nondisclosure, and*

*b. Specific items of medical-record information supplied by a medical-care institution or*

*medical professional shall be disclosed either directly to the individual about whom the information relates or to a medical professional designated by the individual and licensed to provide medical care with respect to the condition to which the information relates, whichever the insurance institution or agent prefers; and*

*3. The names and addresses of the institutional sources that supplied the specific items of information given pursuant to paragraph 2. of subsection B. of this section; however, the identity of any medical professional or medical-care institution shall be disclosed either directly to the individual or to the designated medical professional, whichever the insurance institution or agent prefers.*

*C. The obligations imposed by this section upon an insurance institution or agent may be satisfied by another insurance institution or agent authorized to act on its behalf.*

*D. When an adverse underwriting decision results solely from an oral request or inquiry, the explanation of reasons and summary of rights required by paragraph A. of this section may be given orally.*

*§ 38.1-57.14. Information concerning previous adverse underwriting decisions.—No insurance institution, agent, or insurance-support organization may seek information in connection with an insurance transaction concerning: (i) Any previous adverse underwriting decision experienced by an individual; or (ii) Any previous insurance coverage obtained by an individual through a residual market mechanism,*
*unless such inquiry also requests the reasons for any previous adverse underwriting decision or the reasons why insurance coverage was previously obtained through a residual market mechanism.*

*§ 38.1-57.15. Previous adverse underwriting decisions.—No insurance institution or agent may base an adverse underwriting decision in whole or in part:*

*1. On the fact of a previous adverse underwriting decision or on the fact that an individual previously obtained insurance coverage through a residual market mechanism. An insurance institution or agent, however, may base an adverse underwriting decision on further information obtained from an insurance institution or agent responsible for a previous adverse underwriting decision;*

*2. On personal information received from an insurance-support organization whose primary source of information is insurance institutions. An insurance institution or agent, however, may base an adverse underwriting decision on further personal information obtained as the result of information received from such insurance-support organization.*

*§ 38.1-57.16. Disclosure limitations and conditions.—An insurance institution, agent, or insurance-support organization shall not disclose any personal or privileged information about an individual collected or received in connection with an insurance transaction unless the disclosure is:*

*1. With the written authorization of the individual, provided:*

*a. If such authorization is submitted by another insurance institution, agent, or insurance-support organization, the authorization meets the requirements of § 38.1-57.9; or*

*b. If such authorization is submitted by a person other than an insurance institution, agent, or insurance-support organization, the authorization is:*

*(1) Dated,*

*(2) Signed by the individual, and*

*(3) Obtained one year or less prior to the date a disclosure is sought pursuant to this paragraph; or*

*2. To a person other than an insurance institution, agent, or insurance-support organization, provided such disclosure is reasonably necessary:*

*a. To enable such person to perform a business, professional or insurance function for the disclosing insurance institution, agent, or insurance-support organization and such person agrees not to disclose the information further without the individual's written authorization unless the further disclosure:*

*(1) Would otherwise be permitted by this section if made by an insurance institution, agent, or insurance-support organization; or*

*(2) Is reasonably necessary for such person to perform its function for the disclosing insurance institution, agent, or insurance-support organization; or*

*b. To enable such person to provide information to the disclosing insurance institution, agent, or insurance-support organization for the purpose of:*

*(1) determining an individual's eligibility for an insurance benefit or payment; or*

*(2) detecting or preventing criminal activity, fraud, material misrepresentation, or material nondisclosure in connection with an insurance transaction; or*

*3. To an insurance institution, agent, insurance-support organization, or self-insurer, provided the information disclosed is limited to that which is reasonably necessary:*

*a. To detect or prevent criminal activity, fraud, material misrepresentation, or material*

*nondisclosure in connection with insurance transactions; or*

*b. For either the disclosing or receiving insurance institution, agent or insurance-support organization to perform its function in connection with an insurance transaction involving the individual; or*

*4. To a medical-care institution or medical professional for the purpose of (i) verifying insurance coverage or benefits, (ii) informing an individual of a medical problem of which the individual may not be aware or (iii) conducting an operations or services audit, provided only such information is disclosed as is reasonably necessary to accomplish the foregoing purposes; or*

*5. To an insurance regulatory authority; or*

*6. To a law-enforcement or other government authority:*

*a. To protect the interests of the insurance institution, agent or insurance-support organization in preventing or prosecuting the perpetration of fraud upon it; or*

*b. If the insurance institution, agent, or insurance-support organization reasonably believes that illegal activities have been conducted by the individual; or*

*7. Otherwise permitted or required by law; or*

*8. In response to a facially valid administrative or judicial order, including a search warrant or subpoena; or*

*9. Made for the purpose of conducting actuarial or research studies, provided:*

*a. No individual may be identified in any actuarial or research report, and*

*b. Materials allowing the individual to be identified are returned or destroyed as soon as they are no longer needed, and*

*C. The actuarial or research organization agrees not to disclose the information unless the disclosure would otherwise be permitted by this section if made by an insurance institution, agent, or insurance-support organization; or*

*10. To a party or a representative of a party to a proposed or consummated sale, transfer, merger, or consolidation of all or part of the business of the insurance institution, agent, or insurance-support organization, provided:*

*a. Prior to the consummation of the sale, transfer, merger, or consolidation only such information is disclosed as is reasonably necessary to enable the recipient to make business decisions about the purchase, transfer, merger, or consolidation, and*

*b. The recipient agrees not to disclose the information unless the disclosure would otherwise be permitted by this section if made by an insurance institution, agent or insurance-support organization; or*

*11. To a person whose only use of such information will be in connection with the marketing of a product or service, provided:*

*a. No medical-record information, privileged information, or personal information relating to an individual's character, personal habits, mode of living, or general reputation is disclosed, and no classification derived from such information is disclosed,*

*b. The individual has been given an opportunity to indicate that he does not want personal information disclosed for marketing purposes and has given no indication that such individual does not want the information disclosed, and*

*c. The person receiving such information agrees not to use it except in connection with the marketing of a product or service; or*

*12. To an affiliate whose only use of the information will be in connection with an audit of the insurance institution or agent or the marketing of an insurance product or service, provided the affiliate agrees not to disclose the information for any other purpose or to unaffiliated persons; or*

*13. By a consumer reporting agency, provided the disclosure is to a person other than an insurance institution or agent; or*

*14. To a group policyholder for the purpose of reporting claims experience or conducting an audit of the insurance institution's or agent's operations or services, provided the information disclosed is reasonably necessary for the group policyholder to conduct the review or audit; or*

*15. To a professional peer review organization for the purpose of reviewing the service or conduct of a medical-care institution or medical professional; or*

*16. To a governmental authority for the purpose of determining the individual's eligibility for health benefits for which the governmental authority may be liable; or*

*17. To a certificateholder or policyholder for the purpose of providing information regarding the status of an insurance transaction.*

*§ 38.1-57.17. Powers of the Commission.—A. The Commission shall have the power to examine and investigate into the affairs of every insurance institution or agent doing business in this Commonwealth to determine whether the insurance institution or agent has been or is engaged in any conduct in violation of this act.*

*B. The Commission shall have the power to examine and investigate the affairs of every insurance-support organization which acts on behalf of an insurance institution or agent and which either (i) transacts business in this Commonwealth, or (ii) transacts business outside this Commonwealth and has an effect on a person residing in this Commonwealth in order to determine whether such insurance-support organization has been or is engaged in any conduct in violation of this act.*

*C. The Commission, after notice and opportunity for all interested parties to be heard, may issue such reasonable rules and regulations as are necessary or proper to carry out the provisions of this act or which are necessary or proper to identify specific practices prohibited by this Act; provided, however, that such rules or regulations shall not enlarge upon or extend the provisions of this act.*

*§ 38.1-57.18. Hearings and procedures.—A. Whenever the commission has reason to believe that an insurance institution, agent or insurance-support organization has been or is engaged in conduct in this Commonwealth which violates this act, or whenever the Commission has reason to believe that an insurance-support organization has been or is engaged in conduct outside this Commonwealth which has an effect on a person residing in this Commonwealth and which violates this Act, the Commission may issue and serve upon such insurance institution, agent, or insurance-support organization a statement of charges and notice of hearing to be held at a time and place fixed in the notice. The date for such hearing shall be not less than ten days after the date of service.*

*B. At the time and place fixed for such hearing the insurance institution, agent, or insurance-support organization charged shall have an opportunity to answer the charges against it and present evidence on its behalf. Upon good cause shown, the Commission shall permit any adversely affected person to intervene, appear and be heard at such hearing by counsel or in person.*

*C. In all matters in connection with such investigation, charge, or hearing the Commission shall have the jurisdiction, power and authority granted or conferred upon it by Title 12.1 of this Code.*

*§ 38.1-57.19. Service of process; insurance-support organizations.—For the purpose of this Act, an insurance-support organization transacting business outside this Commonwealth which has an effect on a person residing in this Commonwealth shall be deemed to have appointed the clerk of the Commission to accept service of process on its behalf, provided the clerk of the Commission causes a copy of such service to be mailed forthwith by registered mail to the insurance-support organization at its last known principal place of business. The clerk shall file an affidavit of compliance with the requirements of this section with the other papers in the proceeding giving rise to such service.*

*§ 38.1-57.20. Cease and desist orders.—If, after a hearing pursuant to § 38.1-57.18, the Commission determines that the insurance institution, agent, or insurance-support organization charged has engaged in conduct or practices in violation of this Act, it may issue an order requiring such insurance institution, agent, or insurance-support organization to cease and desist from the conduct or practices constituting a violation of this Act.*

*§ 38.1-57.21. Penalties.—A. In any case where a hearing pursuant to § 38.1-57.18 results in the finding of a knowing violation of this Act, the Commission, in addition to the issuance of a cease and desist order as prescribed in § 38.1-57.20, may order payment of a monetary penalty of not more than five hundred dollars for each violation but not to exceed ten thousand dollars in the aggregate for multiple violations.*

*B. Any person who violates a cease and desist order of the commissioner under § 38.1-57.20, after notice and hearing and upon order of the Commission, may be subject to one or more of the following penalties, at the discretion of the Commission:*

*1. A monetary fine of not more than ten thousand dollars for each violation; or*

*2. A monetary fine of not more than fifty thousand dollars if the Commission finds that violations have occurred with such frequency as to constitute a general business practice; or*

*3. Suspension or revocation of an insurance institution's or agent's license.*

*§ 38.1-57.22. Appeal of right.—From any final order of the Commission issued pursuant to the provisions of this Act there shall be an appeal of right to the Supreme Court of Virginia.*

*§ 38.1-57.23. Reserved.*

*§ 38.1-57.24. Individual remedies.—A. If any insurance institution, agent, or insurance-support organization fails to comply with §§ 38.1-57.11, 38.1-57.12, or § 38.1-57.13 with respect to the rights granted under those sections, any person whose rights are violated may apply to a court of competent jurisdiction for appropriate equitable relief.*

*B. An insurance institution, agent, or insurance-support organization which discloses information in violation of § 38.1-57.16 shall be liable for damages sustained by the individual to whom the information relates. No individual, however, shall be entitled to a monetary award which exceeds the actual damages sustained by the individual as a result of a violation of § 38.1-57.16.*

*C. In any action brought pursuant to this section, the court may award the cost of the action and reasonable attorney's fees to the prevailing party.*

*D. An action under this section must be brought within two years from the date the alleged violation is or should have been discovered.*

*E. Except as specifically provided in this section, there shall be no remedy or recovery available to individuals, in law or in equity, for occurrences constituting a violation of any provision of this Act.*

*§ 38.1-57.25. Immunity.—No cause of action is the nature of defamation, invasion of privacy, or negligence shall arise against any person for disclosing personal or privileged information in accordance with this Act, nor shall such a cause of action arise against any person for furnishing personal or privileged information to an insurance institution, agent, or insurance-support organization; however, this section shall provide no immunity for disclosing or furnishing false information with malice or willful intent to injure any person.*

*§ 38.1-57.26. Obtaining information under false pretenses.—Any person who knowingly and willfully obtains information about an individual from an insurance institution, agent or insurance-support organization under false pretenses shall be fined not more than ten thousand dollars nor imprisoned for more than one year, or both.*

*§ 38.1-57.27. Severability.—If any provision of this Act or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the Act and the application of such provision to other persons or circumstances shall not be affected thereby.*

*§ 38.1-57.28. Effective date.—A. This Act shall become effective January one, nineteen hundred eighty-two.*

*B. The rights granted under §§ 38.1-57.11, 38.1-57.12 and 38.1-57.16 of this Act shall take effect on January one, nineteen hundred eighty-two regardless of the date of the collection or receipt of the information which is the subject of such sections.*

2. That § 38.1-52.14 of the Code of Virginia is repealed, effective January one, nineteen hundred eighty-two.

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President of the Senate

_____

Speaker of the House of Delegates

Approved:

_____

Governor