

SUMMARY OF CERTAIN 2011 VIRGINIA INSURANCE LAW AMENDMENTS

The Virginia General Assembly has enacted amendments or additions to several portions of the Code of Virginia related to insurance. The following is a brief summary of some of the amendments that may be of interest that will go into effect July 1, 2011 (unless otherwise specified):

General Changes:

- **Investments; Derivative Instruments.** Amendments to §38.2-1501 and addition of §38.2-1522 establish the criteria domestic insurers must meet to engage in hedging and replication transactions involving derivative instruments, including options, warrants, caps, floors, collars, swaps, forwards and futures. The State Corporation Commission may adopt rules and regulations for derivative transactions including financial solvency standards, valuation standards, and reporting requirements. Any insurer engaged in hedging transactions must demonstrate the ongoing effectiveness of the derivative transaction or combination of the transaction through cash flow testing or other analyses. There are limits on the percentage of assets that may be used in hedging transactions. The addition to the statute also has an enactment clause providing that insurers currently investing in derivative instruments may continue doing so after the effective date (July 1, 2011), provided they submit guidelines to the SCC for review by April 1, 2011.
- **Taxation.** Amendments to various provisions of Title 38.2 and additions to several provisions in the Surplus Lines Insurance Law (§§38.2-4800 et seq.) transfer the responsibility for the administration of gross premium taxation from the SCC to the Department of Taxation. Surplus lines brokers that fail to file required reports are subject to fines and penalties. Provisions regarding the tax on surplus lines policies are effective July 1, 2011. Other provisions shall become effective for the taxable year on or after January 1, 2013.
- **Surplus Lines.** Amendments to the Insurance Agents and Surplus Lines chapters (§§38.2-1800 et seq. §§38.2-4800 et seq. respectively) implement provisions of the federal Nonadmitted and Reinsurance Reform Act of 2010. The amendments eliminate the requirement that a surplus lines broker be licensed in Virginia unless the broker is selling, soliciting, or negotiating contracts of insurance for insureds whose home state is Virginia. The amendments also establish uniform eligibility requirements for the approval of nonadmitted or unlicensed insurers in Virginia and clarifies that surplus lines premium taxes will be collected for risks where the home state is Virginia.

Property & Casualty:

- **Professional Liability Insurance Policies; Exemptions for Large Commercial Risks and Reporting.** Amendment to §38.2-1903.1 makes professional liability insurance policies eligible for the exemption currently existing for most types of policies written for large commercial risks. It also eliminates the requirement that insurers issuing policies under the exemption for large commercial risks report annually to the SCC on the number of exempted policyholders and the criteria establishing the exemption.
- **Increase of Medical Malpractice Cap.** Amendment to §8.01-581.15 increases the cap on the amount an injured person may receive from a judgment in a medical malpractice action for acts occurring after July 1, 2012. The new cap on July 1, 2012 will be \$2.05 million, and the cap will increase \$50,000 annually each July 1 until it reaches the maximum of \$3 million on July 1, 2031. (Note: If policy limit increase results in greater than 25% premium increase, premium increase notice requirement under §38.2-231 L may be triggered unless insured has requested the insurer to increase the liability limit as the cap increases.)
- **Underinsured Motorist Coverage.** Amendments to §38.2-2206 provide that a liability insurer may make irrevocable offers of its limits contingent upon a final judgment that is at least equal to the liability insurer's offer or may make such offer of its limits contingent upon the underinsured motorist insurer's waiver of subrogation. These provisions clarify legislation enacted in 2010 that permits a liability insurer to be relieved of the costs of defending the owner or operator in a claim to the extent the costs are incurred after the liability insurer makes an irrevocable written offer to pay the limits of its policy.
- **Portable Electronics Insurance.** The Insurance Agents chapter (§§38.2-1800 et seq.) was amended to allow for the sale of Portable Electronics Insurance (PEI) for the repair or replacement of portable electronic devices by vendors of such devices. Vendors are required to hold a limited lines property and casualty insurance agent license.
- **Automobile Club Licensing Exemption.** Addition of §38.2-400.10 provides an exemption to legal entities from the automobile club licensing requirements. The exemption applies if the legal entity contracts with an automobile club that is licensed in Virginia to provide emergency road and towing service to the legal entity's customers.

Life and Health:

- **General Provisions; Life Insurance Definition.** Amendments to § 38.2-102 change the definition of "life insurance" to include additional benefits that provide specified disease or limited benefit health coverage, subject to compliance with the minimum standards for individual accident and sickness policies set forth in §38.2-3519. These benefits may be combined in an individual

policy or added as a rider if the insurer is licensed in accident and sickness insurance in Virginia and complies with rate and form filing requirements.

- **Life, Accident & Sickness Guaranty Association.** Amendments to §38.2-1715 require posting of the Association’s summary document on its website. In addition, a new procedure is established for the Association to dispose of any surplus funds due to insurer insolvency. The amendments also require the Association to reimburse member insurers for assessment costs not otherwise amortized and offset and to then pay the remaining surplus to the SCC for deposit in Virginia’s general fund.
- **Retained Asset Accounts.** Amendments to the Life Insurance chapter (§§38.2-3100 et seq.) require Virginia licensed insurers that offer retained asset accounts for death benefits to provide the beneficiary, at the time a claim is made, with written information describing the settlement options available under the policy and how to obtain details about the options. The insurer is also required to make certain written disclosures to the beneficiary. If the insurer settles benefits through a retained asset account, the insurer shall provide the beneficiary with a supplemental contract disclosing the rights of the beneficiary and the obligations of the insurer under the supplemental contract.
- **Exemption for Bank Multiple Employer Welfare Arrangements.** Amendments to §38.2-3420 (Accident and Sickness Insurance) exempt multiple employer welfare arrangements (MEWAs) that are comprised of banks and their plan sponsoring organization, and their respective employees, from the insurance laws. A “plan sponsoring organization” is defined as an association that sponsors a MEWA comprised only of banks that have been in existence for at least five years and was not formed for the purpose of obtaining insurance.
- **Internal and External Reviews.** House Bill 1928 significantly revises various provisions of Virginia’s insurance laws regarding independent external review of a health carrier’s final adverse determination about covered benefits. The bill tracks the Uniform Health Carrier External Review Model Act prepared by the NAIC. The bill also enacts a new chapter requiring a health carrier to establish an internal appeals process and adding requirements for external review consistent with the obligations in the federal Patient Protection and Affordable Care Act (PPACA). The provisions of the bill expire on July 1, 2014.
- **Creation of Virginia Health Benefits Exchanges.** House Bill 2434 states that it is the Virginia General Assembly’s intent that Virginia create and operate its own health benefits exchange or exchanges meeting, at minimum, the requirements of the federal PPACA. The Governor will work with the General Assembly and seek recommendations from experts, due by October 1, 2011, for consideration by the 2012 General Assembly. The provisions of this bill expire on July 1, 2014.
- **Coverage for Diagnosis and Treatment of ASD.** Amendments to the Accident and Sickness Insurance chapter (§§38.2-3400 et seq.) and §38.2-4319 (HMOs)

require health insurers, health care subscription plans, and health maintenance organizations to provide coverage for the diagnosis of autism spectrum disorder (ASD) and treatment of ASD in individuals from age two to six. Effective January 1, 2012, there is an annual maximum benefit of \$35,000 or greater for coverage of applied behavior analysis. This mandate to provide coverage does not apply to individual or small employer group policies, contracts, or plans, and it will not apply to an insurer, corporation or health maintenance organization, or the state employee health benefit plan if the costs associated with coverage for behavioral health treatment exceed one percent of the premiums charged over the experience period.

- **Conformity to Federal PPACA Law.** House Bill 1958 changes health insurance provisions in the Accident and Sickness Insurance chapter (§§38.2-3400 et seq.) to conform to provisions of the federal PPACA, which became effective on September 23, 2010. The provisions expire on July 1, 2014.

Please note that this is just a summary of certain legislative changes. It is not a complete list or interpretation of the insurance related legislative amendments in Virginia in 2011. If you have any questions or would like additional information, please contact Scott Sorkin or Richard Bland at ssorkin@blandsorkin.com or rbland@blandsorkin.com www.blandsorkin.com