



## Summary of Certain 2016 Virginia Insurance Law Amendments

The Virginia General Assembly has enacted amendments or additions to several portions of the Code of Virginia (the “Code”) relating to insurance that go into effect July 1, 2016 (except as otherwise indicated). The following is a brief summary of some of the amendments that may be of interest.

### General Changes:

- ✓ **State Corporation Commission (“SCC”) Insurance Assessments.** Senate Bill (“SB”) 209 amends the Code (§§ 38.2-403.1 and 405) to authorize the SCC to recover omitted, under-assessed, or unrealized assessments pertaining to its regulation of insurers for the most recent three years. SB 209 also establishes a procedure for an insurer to apply to the SCC for an assessment correction and refund in the event of a perceived mistake by the SCC.
- ✓ **Authority to Limit Decreases in Insurance Rates: Rate Stabilization.** House Bill (“HB”) 324 amends the Code (§ 38.2-1906) to authorize insurers to file rate or supplementary rate information for their renewal policies which permits them to limit any rate decrease that would otherwise be applicable to the policies, so long as the insurer also limits any rate increase that would otherwise be applicable to the policies. HB 324 does not apply to workers’ compensation or employers’ liability policies. **Effective September 1, 2016.**
- ✓ **Insurance Agents: Continuing Education Program.** HB 844 amends the Code (§§ 38.2-1868.1, 1869 and 1870) to grant agents who have completed all continuing education course or exemption requirements, except payment of the filing fee, by December 31 an additional period (until January 31) to pay the filing fee, so long as the agent provides a \$100 late fee in addition to the original fee. HB 844 also (1) removes the restriction requiring that the Insurance Continuing Education Board’s waiver of requirements regarding the number of course credits required for good cause be based on emergency situations and (2) deletes the condition that requests for waivers of course credit requirements be submitted no later than 90 calendar days prior to the end of the biennium for which the waiver is requested.

- ✓ **Insurance Agencies: Designated Licensed Producers.** HB 393 amends the Code (§§ 38.2-1820, 1825, 1826, 1838, 1841, 1845.2, 1857.2, 1865.1 and 1865.5) to require that an insurance agency's designated licensed producer responsible for the agency's compliance with insurance laws and regulations be an employee, officer or director of the agency. However, with respect to a business entity applying for certain types of a limited lines license, HB 393 does not require the licensed producer designated by the vendor or lessor to be an employee, officer or director of the vendor or lessor. Further, HB 393 requires business entities acting as insurance producers to report within 30 calendar days (1) the removal of the designated licensed producer responsible for the business entity's compliance with insurance laws, rules, and regulations and (2) the name of the new designated licensed producer. HB 393 authorizes the SCC to terminate an insurance agency's license for failing to maintain a designated licensed producer in accordance with the above-provisions.
- ✓ **Real Estate Settlement Agents.** SB 204 adds the term "closing disclosure" to provisions of the Code (§§ 38.2-1825, 55-525.14, 55-525.16, 55-525.17, 55-525.24 - .26 and 55-525.30) relating to real estate settlement agents. SB 204 defines "closing disclosure" as the combined mortgage loan disclosure statement of final loan terms and closing costs prescribed under the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. § 2601 et seq.) and Consumer Financial Protection Bureau Regulations X (12 C.F.R. Part 1024) and Z (12 C.F.R. Part 1026), to comply with changes made by the federal Consumer Financial Protection Bureau to the real estate closing process. SB 204 also makes the settlement agent's registration fee nonrefundable.

### Property and Casualty:

- ✓ **Mailing of Notices.** HB 31 and SB 192 amend the Code (§§ 38.2-231, 2113 and 2208) to restore insurers' ability to provide notice regarding non-renewal of a motor vehicle, commercial liability, or homeowner's insurance policy using mailing methods that provide a certificate of mailing. However, certificates of bulk mailing are not permissible. HB 31 and SB 192 also clarify that (1) Intelligent Mail Barcode Tracing is a permitted first-class mail tracking method and (2) that insurers are required to maintain records regarding the sending of notices for one year regardless of the method used to send the notice. **Effective March 1, 2016.**
- ✓ **Notice Requirements.** HB 307 updates and clarifies the Code (§§ 38.2-1905, 2118-21120, 2202 and 2210) to require that insurers provide notice to insureds when increasing premiums due to an accident by specifying that insurers must inform insureds that they have 60 days to seek a review by the Bureau of Insurance regarding the application of a surcharge. HB 307 also updates uninsured and underinsured motorist ("UM/UIM")

requirements to allow insurers to give insureds the opportunity to request UM/UIM limits so long as the lower limits are at least \$25,000/\$50,000/\$20,000. Other provisions of HB 307 clarify which notices are required to be given solely on new business policies and those required for both new and renewal business policies. **Effective January 1, 2017.**

- ✓ **Home Service Contract Providers: Licensure.** HB 304 amends the Code (§§ 38.1-2619 and 2622) to authorize the SCC to deny an initial license application for a home service contract provider (“HSCP”) based on its review of the applicant’s financial statements, reports, certificates, or other documents filed with the SCC. HB 304 also: (1) changes the license renewal cycle for a HSCP to an annual process with an application fee of \$500; (2) clarifies that the Virginia reserve requirement for a HSCP is determined by taking the gross consideration received for all home service contracts, subtracting the claims paid, and then multiplying the remainder by 40%; (3) replaces a reference to “premiums” with “provider fees” because home service contracts are not insurance; and (4) amends the provision dealing with the filing of audited financial statements to allow for statements prepared in accordance with generally accepted accounting principles. **Effective February 29, 2016.**
- ✓ **Automobile Clubs.** SB 210 repeals provisions of the Code (§§ 38.2-221.3, 514.1 and 1800) regarding the licensure of automobile clubs by the SCC. The repealed provisions governed (1) the authority of insurance agents to negotiate automobile club contracts on behalf of licensed automobile clubs and (2) the issuance of guaranteed arrest bond certificates by an automobile club or association.
- ✓ **Unfair Settlement Practices: Appraisal of Automobile Repair Costs.** HB 870 and SB 193 amend the Code (§ 38.2-510) to allow both initial and supplemental appraisals of losses stemming from motor vehicle repair costs to be based upon personal inspection or digital imagery of the damage. HB 870 and SB 193 also (1) allow the initial damage appraisal to be final and (2) prevent the insurer from requiring the claimant to utilize imagery as a condition of appraising damage.

## **Life and Health:**

- ✓ **Health Benefit Plans: Large and Small Employers.** HB 58 deletes provisions of the Code (§§ 38.2-3406.1, 3431 and 3551) to redefine “large employer” to include companies that employed an average of 51 or more employees during the preceding calendar year. Correspondingly, HB 58 redefines “small employer” to include companies employing an average of 50 or fewer employees during the preceding calendar year. **Effective January 26, 2016.**
- ✓ **Health Benefit Plans: Federal Law Changes.** SB 562 amends the Code (§ 38.2-3454.1) to authorize health carriers to offer for sale, sell, issue or renew any health benefit plan that

would otherwise not be permitted due to a conflict with the requirements of the federal Patient Protection and Affordable Care Act (“PPACA”), but only to the extent that the enforcement of the PPACA is suspended by the appropriate federal authority or the health benefit plan conforms to amendments of the PPACA by federal law.

- ✓ **Life Insurance Policies and Annuity Contracts: Exemption from Creditors’ Claims.** SB 640 amends the Code (§ 38.2-3122) to provide exemptions to the prohibition on execution, attachment, garnishment, or other legal process in favor of a creditor regarding (1) the cash surrender value or proceeds of any life insurance policy or annuity contract, (2) the withdrawal value of an optional settlement or deposit with a life insurance company, or (3) any other benefit from such a policy.
- ✓ **Electronic Delivery of Notice.** HB 820 amends the Code (§§ 38.2-325, 4214 and 4319) to allow health carriers to provide evidence of coverage and other forms required to be given to policyholders, subscribers, and enrollees—that do not contain personally identifiable information—electronically or by posting on the health carrier’s publicly available website, provided that such forms are readily downloadable and printable without charge or the need for special programs.
- ✓ **Electronic Delivery of Notice: Insured’s Responsibilities.** HB 851 repeals the December 31, 2016 sunset date of a provision of § 38.2-325 of the Code that: (1) makes the notification to an insurer of any change of the electronic address for the named insured the sole responsibility of the named insured; and (2) states giving notice of change of the named insured’s electronic address to the agent of record shall not be deemed to be notice to the insurer unless it is specifically identified as a change and receipt has been accepted by the agent of record.
- ✓ **Payment for Services by Dentists and Oral Surgeons.** HB 16 amends the Code (§ 38.2-3407.17) to require that reimbursements payable or paid by a dental plan for covered services be reasonable and not merely provide nominal reimbursement in order to claim that services are covered services under the dental plan. Reimbursement is reasonable if it is the negotiated fee, rate, or reimbursement methodology set forth in the contract between the dental plan and a dentist or oral surgeon and is acceptable to the provider. HB 16 only applies to contracts entered into, amended, extended, or renewed on or after January 1, 2017.
- ✓ **Health Insurance Reform Commission.** HB 87 amends the Code (§ 30-343) to specify that if applicable federal rules require a Virginia agency to identify any state-mandated benefits that are in addition to essential health benefits without specifying which agency is responsible for making such identification, the Virginia Bureau of Insurance shall be the applicable agency.

Please note 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 2016. If you have any questions or would like additional information, please contact Scott Sorkin or Richard Bland at [ssorkin@blandsorkin.com](mailto:ssorkin@blandsorkin.com) or [rbland@blandsorkin.com](mailto:rbland@blandsorkin.com).