



## Summary of Certain 2018 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, 2018 (except as otherwise indicated). The following is a brief summary of some of the amendments that may be of interest.

### General Changes:

- ✓ **State Corporate Commission; Assistance with Foreign Insurance Policies.** HB396 adds § 38.3-515.1 to the Code, which authorizes the State Corporate Commission to assist consumers and to examine and investigate complaints and inquiries relating to trade practices and claim settlement practices of insurers involving certain group accident and sickness insurance policies issued outside of the Commonwealth but covering residents of the Commonwealth.
- ✓ **Insurance Agents; Continuing Education Requirements.** SB853 amends and reenacts §§ 38.2-1868.1, 38.2-1869, 38.2-1871, and 38.2-1872 of the Code. These amendments revise the deadlines by which insurance agents are required to comply with continuing education requirements applicable to licensed insurance agents. The measure also revises provisions regarding licensees who are exempt from continuing education requirements. **Effective January 1, 2019.**

### Property & Casualty:

- ✓ **Surplus Lines Coverage Placed with Domestic Surplus Lines Insurers.** SB 542 adds § 38.2-4811.1 to the Code, which establishes the criteria for the licensure of surplus lines insurers domiciled in Virginia as long as the insurer possesses a policyholder surplus of at least \$15 million, and the board of directors of the insurer passes a resolution seeking to be a domestic surplus lines insurer in Virginia. Prior to this, the Commonwealth only allowed for the licensure of foreign and alien surplus lines insurers and any surplus lines insurers seeking to do business in Virginia had to be domiciled in a state besides Virginia. A domestic surplus lines insurer is considered a nonadmitted insurer for the purposes of the federal Nonadmitted and Reinsurance Reform Act of 2010 with respect to risks insured in

Virginia. Policies issued by a domestic surplus lines insurer are subject to the same taxes and maintenance assessments levied upon surplus lines policies issued by eligible nonadmitted insurers, if Virginia is the home state of the insured, and are not subject to guaranty fund protection.

- ✓ **Personal Injury Claim; Disclosure of Insurance Policy Limits.** SB535 amends § 8.01-417 of the Code. This amendment provides that in a civil action for personal injuries sustained from a motor vehicle accident, regardless of the amount of losses sustained by an injured person, an insurance company shall disclose the policy limits of an alleged tortfeasor who has been convicted of an offense of driving under the influence within 30 days of a request for such disclosure.

### **Life & Health:**

- ✓ **Virginia Life, Accident & Sickness Insurance Guaranty Association; Assessments for Long-Term Care Insurance.** HB1486 amends and reenacts §§ 38.2-1016.1, 38.2-1700 through 38.2-1710, 38.2-1714, 38.2-1715, 38.2-4302, 38.2-4310, 38.2-4319, 38.2-5506, 38.2-5509, 38.2-5510, and 55-532 of the Code. The changes amend the methodology for allocating assessments for long-term care insurance written by an impaired or insolvent insurer. The measure requires that 50 percent of such assessments be allocated to health insurers and 50 percent to life insurers. The measure provides that health maintenance organizations (HMOs) will participate in the Guaranty Association. The measure also updates terminology and makes conforming amendments based on proposed changes to the National Association of Insurance Commissioner's Life and Health Insurance Guaranty Association model act. In addition, the bill repealed §§ 38.2-4317 and 38.2-4317.1, which established an alternative method to address insolvencies of HMOs.
- ✓ **Life Insurance Policies; Claims of Creditors.** SB176 repeals § 38.2-3123 of the Code, a provision that excludes, from the protections from claims of creditors that are afforded life insurance policies and annuities, the cash surrender or loan value of a policy under which the right to change the beneficiary is reserved. In 2016, the General Assembly enacted a provision that exempts protected insurance items from the claims of creditors regardless of whether the right to change a beneficiary is reserved or permitted.
- ✓ **Medicare, Medicaid and CHIP; Duty of In-Network Providers to Submit Claims.** SB536 amends and reenacts § 8.01-27.5 of the Code. The change extends the duty of in-network providers of health care services to submit claims to an insurer for health care provided to an individual covered by Medicare, Medicaid, or CHIP within a specified time period.

- ✓ **Health Insurance; Small Employers; Self-Employed Persons.** SB672 amends and reenacts §§ 38.2-3406.1 and 38.2-3431 of the Code, which revises the definition of "small employer" for purposes of health insurance to include a self-employed person. The measure also provides that an individual who is the sole shareholder of a corporation or sole member of a limited liability company, or an immediate family member of such sole shareholder or member, qualifies as an employee of the corporation or limited liability company if he performed any service for remuneration under a contract of hire for the corporation or limited liability company.
- ✓ **Pension De-Risking; Limits Subsequent Transfers of Group Annuity Contracts.** SB755 amends and reenacts §38.2-3125 of the Code and adds §§ 38.2-3111.1 and 38.2-3122.1 to the Code. These changes limit the subsequent transfers of group annuity contracts that are purchased to fund retirement benefits pursuant to a pension de-risking transfer. The measure prohibits such transfers without the prior written approval of the State Corporation Commission. Such approval shall not be granted unless it makes certain findings regarding whether the annuity benefits will continue to be protected under ERISA or by the Federal Pension Benefit Guaranty Corporation and whether the transfer or assignment is made to an insurer that has the financial strength to fulfill its obligations under the annuity contract. The measure also provides that amounts payable to a participant of or beneficiary under such an annuity contract are exempt from the claims of creditors of the participant or beneficiary, subject to certain exceptions and limitations.
- ✓ **Health Insurance; Contracts with Pharmacies and Pharmacists, etc.** SB933 adds § 38.2-3407.15:4 to the Code, which provides that no provider contract between a health carrier or its pharmacy benefits manager and a pharmacy or its contracting agent shall contain a provision (i) authorizing the carrier or its pharmacy benefits manager to charge, (ii) requiring the pharmacy or pharmacist to collect, or (iii) requiring an enrollee to make, a copayment for a covered prescription drug in an amount that exceeds the least of the applicable copayment for the prescription drug that would be payable in the absence of this section; or the cash price the enrollee would pay for the prescription drug if the enrollee purchased the prescription drug without using the enrollee's health plan. The measure requires provider contracts between a health carrier or its pharmacy benefits manager and a pharmacy or its contracting agent to contain specific provisions that allow a pharmacy to disclose to an enrollee information relating to the provisions of this section and the availability of a more affordable therapeutically equivalent prescription drug; sell a more affordable therapeutically equivalent prescription drug to an enrollee if one is available; offer and provide direct and limited delivery services to an enrollee as an ancillary service of the pharmacy. **The measure applies to provider contracts entered into, amended, extended, or renewed on or after January 1, 2019.**

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 2018. 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).