

SUMMARY OF CERTAIN 2013 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 and went into effect July 1, 2013 (except as otherwise indicated):

General Changes:

- **Insurance Notices.** Amendment to §38.2-231, permitting insurers to send termination notices on commercial liability policies only to the *first* named insured listed in the policy's declarations page (instead of all named insureds, as previously required).
- **Insurance Notices.** Amendment to Subsection B of §38.2-305 clarifying which notice requirements are applicable to all insurers, and which are applicable to only health maintenance organizations.
- **Technical Corrections for Administration of Insurance Premiums License Tax (Surplus Lines).** Amendments to §§ 38.2-4809 and 38.2-4809.1 making technical corrections to facilitate the transfer of the administration of the state insurance premiums license tax from the State Corporation Commission ("Commission") to the Department of Taxation pursuant to legislation passed in 2011.
- **Settlement Payment.** Adds a new section to §38.2-236 General Provisions requiring insurers issuing a check of at least \$5,000 to an attorney or other representative of a claimant or judgment creditor, in settlement or satisfaction by an insured or third party of any claim arising out of an insurance policy, to send a specific notice to the claimant or judgment creditor within five days of the payment being made to the attorney or other representative. The law provides that failure to give the notice or providing a defective notice (i) does not create a cause of action for monetary damages for any person against the insurer, (ii) does not create a defense for any person to any cause of action, or (iii) does not invalidate or in any way affect the settlement. This law is applicable to all lines of insurance except those lines subject to §38.2-4214 (Health Service Plans) and 38.2-4319 (HMOs).
- **Elimination of Incidental Compensation Cap (Agents).** Amendment to § 38.2-1878, eliminating the provision capping the incidental compensation a vendor of portable electronics may provide those who sell portable electronics insurance at \$10 per customer.
- **Loss of Insurance Agent License.** Amendment to §38.2-1822 prohibiting an agent whose license has been revoked or voluntarily surrendered from directly or indirectly being employed in any manner by an insurance agent or agency during the time of being unlicensed, unless authorized by the Commission.

Property & Casualty:

- **Fire Insurance Policy Forms.** Amendment to § 38.2-2107 clarifying that excess fire coverage may be written as a stand-alone policy or an endorsement to a policy. The Amendment also removes the requirement of indicating in the title or heading of the policy whether coverage is written on a primary or excess basis.
- **Assignment of Medical Expense Benefits (Motor Vehicle Insurance/Liability Policies).** Amendment to §38.2-2201 establishing requirements for assigning motor vehicle insurance medical expense benefits to assignor's health care provider. Provides a mechanism for health care providers to seek valid assignment of medical expense benefits under a motor vehicle policy in cases where injury arises out of ownership, operation or use of a motor vehicle. In order to be valid, a copy of the executed assignment of benefits (AOB) form must be provided to the motor vehicle insurer. The law provides that the health care provider must give the injured person notice of his rights regarding assignment of such benefits at the time of being asked to make the assignment. The injured person is not required to sign or initial the assignment in order to receive care. The AOB form / notice is required to include, among other things, the insured may wish to consult his insurance agent or an attorney before executing the AOB form. A motor vehicle insurer shall be held harmless for making payments to a health care provider pursuant to a valid assignment of benefits.
- **Self-Storage Unit Insurance.** Amendment to §38.2-1800 establishing a procedure for lessors of self storage units to sell insurance providing coverage against loss or damage to personal property stored in a self storage unit by adding to the lines of insurance that may be sold by those holding a limited lines property and casualty agent license.
- **Electronic Notices.** Amendments to § 38.2-231, 38.2-325, 38.2-2113, 38.2-2114, 38.2-2208, and 38.2-2212 permitting insurers to send cancellation notices electronically, if insured and insurer have agreed to conduct business by electronic means.
- **Travel Insurance.** Adds a new article to Insurance Agents chapter adding travel insurance to the lines of insurance that can be sold by Agents holding a limited lines property and casualty license or acting under an agent holding such a license.

Life and Health

- **Individual accident and sickness insurance.** Amends and reenacts §§ 32.1-352, 38.2-508, 38.2-3432.3, 38.2-3444, 38.2-4229.1, and 58.1-2501 and to repeal § 38.2-4216.1. Repeals requirement that health insurers provide an open enrollment program for individual accident and sickness contracts. The measure also eliminates certain provisions that set a tax rate of 0.75 percent on premiums from policies sold under the open enrollment program, and for taxable years 2013 and thereafter the tax rate will be 2.25 percent. The measure will become effective January 1, 2014.

- **Nonstock Dental or Optometric Services Plan.** Nonstock corporations offering or administering dental or optometric services without acting as the agent for participating dentists or optometrists must maintain a contingency reserve of at least \$4 million. Also requires the Commission to subject nonstock corporations to the requirements regarding Life, Accident and Sickness Insurance Guaranty Association.
- **Notice of lapse in Coverage.** Restates and clarifies §38.2-232 relating to life, accident, annuities, and sickness policies as defined in §38.2-102 through 38.2-109. Provisions of Subsection A of §38.2-232 do not apply to group policies, contracts or plans if general business practice provides written notices of premium due or the insurer has furnished a written notice separate from the policy that failure to pay will result in lapse.
- **Dental and Optometric Services Plans.** Amendment to §38.2-4509 subjecting dental and optometric plans to additional requirements. They must now pay interest on claim payments not made in a timely manner if the total interest is at least \$5.00. They are required to file explanation of benefit forms with the Bureau of Insurance for approval. The provision addressing interest is applicable to claims on and after January 1, 2014.
- **Regulation of Navigators.** Adds new article to Accident and Sickness Insurance Policies chapter identifying prohibited activities for health benefit exchange navigators as described in the ACA. The Commission is required to monitor and report on navigators' activities to the Commonwealth.
- **Health Care Plans to Provide Coverage for Newborn Children.** Amendment to §38.2-3411 requiring HMOs to provide coverage for newborn children in the same manner as health insurance policies and subscription contracts provide family coverage.
- **Plan Management and Rate Review of Health Insurance.** House Bill 1769 and Senate Bill 922 authorizes the Commission, with the assistance of the Virginia Department of Health, to perform plan management functions required to certify health benefit plans and stand-alone dental plans for participation in the federal health benefit exchange pursuant to § 1321 of the ACA. The performance of plan management functions is contingent upon the availability of federal funding sufficient to pay the necessary operating expenses. The bill also adds a new section in the provisions relating to Accident and Sickness Insurance Policies chapter to authorize the Commission to review and approve accident and sickness insurance premium rates applicable to health benefit plans in the individual and small group markets and health benefit plans providing health insurance coverage in the individual market to residents of the Commonwealth through a group trust, association, purchasing cooperative or other group that is not an employer plan.
- **Health Insurance Reform Commission Created.** Amendments to §38.2-3431, 30-58.1, and 2.2-2813, establish the Health Insurance Reform Commission to monitor

implementation of the ACA. Duties of Commission include determining whether Virginia should establish a state-run health benefit exchange; recommending what health benefits should be required to be included within the scope of the essential health benefits provided under health insurance products offered in the Commonwealth; monitoring implementation of the ACA; providing assessments of existing and proposed mandated health insurance benefits and providers; and developing recommendations to increase access to health insurance coverage, ensure that costs of health insurance coverage are reasonable, and encourage a robust market for health insurance products.

- **Health Insurance Reform.** Revises Virginia's laws pertaining to regulation of health insurance and related products to be consistent with the ACA. Also repeals provisions relating to the essential and standard plans in § 38.2-3431. The measure is effective January 1, 2014.

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 2013. 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.