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**STATE CORPORATION COMMISSION
BUREAU OF INSURANCE**

**Letter
Withdrawn
By Administrative
Letter 2016-08**

July 7, 2006

Administrative Letter 2006-12

To: All Property and Casualty Insurance Companies Licensed in Virginia and Rate Service Organizations Licensed in Virginia

Re: Amendments to § 38.2-231 of the Code of Virginia; Withdrawal of Administrative Letter 2005-11

During the 2006 Session of the Virginia General Assembly, House Bill 1001 was enacted which amended § 38.2-231 of the Code of Virginia. Because of these changes, the Bureau is withdrawing Administrative Letter 2005-11. Effective July 1, 2006, House Bill 1001 made the following changes to § 38.2-231:

- Subsections C and L of § 38.2-231 have been amended to require that a notice be given whenever the insurer has initiated a change that results in the renewal premium being increased greater than 25% of the expiring policy's premium. This applies to all policies renewing on or after July 1, 2006. Prior to this change, any premium increase over 25% (including those generated by the insured) required a notice.
- Subsection M of § 38.2-231 defines an insurer-initiated increase in premium as an increase in premium *other than* one resulting from changes in (i) coverage requested by the insured; (ii) policy limits requested by the insured; (iii) the insured's operation or location that result in a change in the classification of the risk; or (iv) the rating exposures including, but not limited to, increases in payroll, receipts, square footage, number of automobiles insured, or number of employees.
- Some examples of an insurer-initiated increase would be an increase in the filed rates; changes in experience or schedule rating resulting in an increase in premium; and for claims-made policies, annual premium increases until the risk reaches a mature claims-made status.

To determine whether a notice is required, the insurer must first compare the renewal premium to the premium charged by the insurer at the effective date of the expiring policy. If the renewal premium has increased more than 25%, the insurer then must determine if its actions have generated a premium increase greater than 25%. The insurer is only required to send notice when its actions have caused the premium to increase more than 25%.

- The law states that the notice must either contain the specific reason for the increase or advise the insured that the specific reason for the increase and the amount of the increase may be obtained from the agent or the insurer.
- Subsection D of § 38.2-231 was amended to clarify the procedures that an insurer must follow when proper notice of an increase in premium or reduction in coverage was not given. If proper notice was not given, the policy remains in effect for 45 days after written notice is mailed or delivered to the insured, unless the insured obtains replacement coverage or elects to cancel sooner. In either case, coverage under the original policy ceases on the effective date of the replacement coverage or the elected date of cancellation. If the insured fails to accept or rejects the changed policy, coverage for any period that extends beyond the expiration date will be under the prior policy's rates, terms, and conditions as applied against the renewal policy's limits, rating exposures, and coverages.
- Subsection E of § 38.2-231 was amended to state that the notice is not required if:
 - (a) the insurer delivers or mails to the named insured a renewal policy or a renewal offer not less than 45 days prior to the effective date or, in the case of medical malpractice insurance, not less than 90 days prior to the effective date of the policy;
 - (b) the policy is issued to a large commercial risk as defined in subsection C of § 38.2-1903.1 (except that policies of medical malpractice insurance are not exempt from the notice requirement); or
 - (c) the policy is retrospectively rated, where the premium is adjusted at the end of the policy period to reflect the insured's actual loss experience.

Most Frequently Asked Questions Regarding the Provisions of § 38.2-231 That Were Not Changed in House Bill 1001

1. What lines of business are subject to this section?

Section 38.2-231 applies to all policies of insurance as defined in §§ 38.2-117 and 38.2-118 that insure a business entity, or policies of insurance that include in part insurance as defined in §§ 38.2-117 or 38.2-118 insuring a business entity. Section 38.2-231 also applies to policies of insurance as defined in § 38.2-124 insuring a business entity and to policies of insurance as defined in subsection B of § 38.2-111 insuring a business entity.

Such policies include, but are not limited to, commercial automobile liability, commercial package policies (that include liability coverage), commercial general liability, professional liability, commercial umbrella, directors' and officers' liability, errors and omissions, employment related practices liability, pollution liability, gap insurance, and tuition refund policies. (Please note that even if a type of insurance is exempt from rate filing requirements, the premium notice requirements still apply.)

Letter
Withdrawn
By Administrative
Letter 201608

The Bureau of Insurance no longer considers § 38.2-231 to apply to personal lines policies that have business exposures endorsed on them. For example, homeowners and private passenger automobile policies that cover some business exposure of the insured are governed by the termination provisions set forth in §§ 38.2-2114 and 38.2-2212, respectively.

Letter
Withdrawn
By Administrative
Letter 2016-08

2. Are any policies that provide coverage for the classes of insurance defined in §§ 38.2-111, 38.2-117, 38.2-118, or 38.2-124 that cover a business entity exempt from § 38.2-231?

Yes. For example, the definition of a “policy of motor vehicle insurance” in subsection H of § 38.2-231 excludes policies issued through the Virginia Automobile Insurance Plan. Please refer to this subsection for additional exemptions.

3. What evidence of mailing does the insurer need to retain if the notices are mailed using the U.S. Postal Bulk Mailing procedure?

If the notices are mailed using the U.S. Postal Bulk Mailing procedure, the company is required to comply with § 38.2-231 F 1 (c), and the company must retain the following:

- a. A copy of the notice;
- b. The completed U.S. Postal Bulk Mailing Form which indicates the date of the mailing and the number of items mailed;
- c. The mailing list showing the name and address stated in the policy, or the last known address to whom the notices were mailed; and
- d. A signed statement by the insurer that the written receipt from the Postal Service corresponds to the mailing list retained by the insurer.

4. When an insurer moves an insured from one company within the group to another, is the insurer required to provide notice to the insured?

Yes. If the renewal offer is not issued by the expiring insurer, a non-renewal notice is required even when coverage is being offered by another insurer within the same group of companies.

5. Subsection A of § 38.2-231 requires the insurer to provide a specific reason when terminating coverage. What is considered a specific reason?

The insurer is required to provide a specific reason that is clear enough for the insured to understand why the policy is being cancelled or non-renewed. The following examples are not considered specific reasons: “loss history,” “driving records,” “claims,” “prohibited risk,” “underwriting reason,” “loss history unacceptable,” “engineering report,” “inspection report,” or “loss ratio exceeds acceptable margin.”

Administrative Letter 2006-12

July 7, 2006

Page 4 of 4

If you have any questions regarding this administrative letter, please contact Carol Howard, Supervisor of the Property & Casualty Consumer Services Section, at (804) 371-9394 ext. 4692.

**Letter
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Letter 2016-08**
AWG/ch

Cordially,

A handwritten signature in black ink, appearing to read "Alfred W. Gross". The signature is fluid and cursive, with a large initial "A" and "G".

Alfred W. Gross
Commissioner of Insurance