

*This version of Chapter 335 is current as of February 15, 2007. To confirm this document's current status, the section titles are hyperlinks and will direct you to the source documents located on the Commonwealth of Virginia's Legislative Services website.*

## **[CHAPTER 335](#)**

### **RULES GOVERNING CLAIMS-MADE LIABILITY INSURANCE POLICIES**

#### **[14VAC5-335-10. Scope.](#)**

The provisions of this chapter shall apply to all policies of liability insurance, as defined in §§[38.2-117](#), [38.2-118](#), and subsection B of §[38.2-111](#) of the Code of Virginia, that limit the time allowed for reporting claims arising out of injury, damage, or wrongful act or omission covered by the policy. Any such policy shall be deemed to be a claims-made liability insurance policy for purposes of this chapter. The provisions of this chapter shall apply to all claims-made liability insurance policies delivered or issued for delivery in the Commonwealth to become effective on or after January 1, 2005.

#### **[14VAC5-335-20. Definitions.](#)**

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Claims-made liability insurance policy" means an insurance policy or endorsement providing coverage for the insured's liability for injury, damage, or wrongful act or omission occurring prior to the termination of coverage but subsequent to any applicable retroactive date, provided the claim for such injury, damage, or wrongful act or omission is first made during the policy period or any extended reporting period.

"Extended reporting period" means an extension of the time allowed for reporting claims, after termination of claims-made liability coverage, for injury, damage, or wrongful act or omission that occurred prior to termination of the coverage and that, except for the requirement to report claims during the policy period, was otherwise covered by the policy.

"Retroactive date" means the date on or after which injury, damage, or wrongful act or omission may occur and be covered under a claims-made liability insurance policy.

#### **[14VAC5-335-30. Insurers to offer extended reporting period coverage.](#)**

A. Every claims-made liability insurance policy issued or delivered in this Commonwealth shall include a provision which shall offer to the named insured extended reporting period coverage upon termination of claims-made coverage. To the extent that policy limits apply separately to each named insured, each named insured shall be separately entitled to purchase an extended reporting period. Termination of claims-made coverage shall include:

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1. Cancellation or nonrenewal of the policy by the insurer or the insured;
2. Advancement of any applicable retroactive date; or
3. Renewal of the coverage on other than a claims-made basis.

B. The insured shall be allowed at least 30 days after termination in which to purchase the extended reporting period coverage.

C. Notwithstanding the foregoing, extended reporting period coverage does not have to be offered if cancellation or nonrenewal of a claims-made liability insurance policy is due to:

1. Nonpayment of premium;
2. Failure to comply with terms or conditions of the policy; or
3. Fraud.

D. No insurer shall deliver or issue for delivery a claims-made liability insurance policy in this Commonwealth unless such policy contains the provisions set forth in subsections A, B and C of this section.

E. The following notice, or a notice that is substantially similar, shall be provided in writing with each new and renewal claims-made liability insurance policy issued or delivered in this Commonwealth:

You have purchased a claims-made liability insurance policy. Please read this policy carefully to understand your coverage. There are certain circumstances in which you must be provided the opportunity to purchase an extended reporting period for reporting claims. These are explained in your policy. If you have any questions regarding the cost of an extended reporting period or the available options under the extended reporting period, please contact your insurance company or your insurance agent.

#### **[14VAC5-335-40. Extended reporting period requirements.](#)**

A. Each insurer shall offer an extension of the time allowed to report claims as follows:

1. For medical professional liability insurance, an unlimited extended reporting period shall be offered;
2. For all other claims-made liability insurance policies, a two-year extended reporting period shall be offered.

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However, this shall not prohibit the insurer from also offering greater or more limited extensions of time in which to report claims. No insurer shall deliver or issue for delivery a claims-made liability insurance policy in this Commonwealth unless such policy contains the applicable provisions set forth in this subsection.

B. Each insurer shall offer an extended reporting period that includes unimpaired limits of liability equal to the limits of the policy being extended. However, this shall not prohibit the insurer from also offering higher or lower limits of liability applicable to the extended reporting period. No insurer shall deliver or issue for delivery a claims-made liability insurance policy in this Commonwealth unless such policy contains the applicable provisions set forth in this subsection. This subsection shall not apply to excess or umbrella liability coverage, or environmental impairment or pollution liability coverage, or to a limited extended reporting period of 60 days or less provided automatically without an additional premium charge; nor shall this subsection apply to any class, line, subclassification, or market segment exempted from this requirement by order of the commission.

C. When an insurer excludes any existing coverage from a claims-made liability insurance policy and the policy remains in effect or is renewed, the insurer shall offer an extended reporting period for such coverage on the same basis that the extended reporting period would be offered if the entire policy were being terminated. For purposes of this subsection, the exclusion of any existing coverage shall not include changes in policy limits or deductibles.

#### **[14VAC5-335-50. Prohibitions.](#)**

A. Once purchased by the insured, extended reporting period coverage shall not be cancelled by the insurer except for nonpayment of premium or fraud. No extended reporting endorsement shall be delivered or issued for delivery in this Commonwealth unless it contains this provision.

B. Except with respect to a limited extended reporting period of 60 days or less provided automatically without an additional premium charge, an insurer shall be prohibited from voiding extended reporting period coverage on the basis that other applicable insurance coverage is in effect. However, this shall not prohibit an insurer from applying the extended reporting period coverage as excess over such other insurance.

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### **[14VAC5-335-60. Severability.](#)**

If any provision of this chapter or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the chapter and the application of such provision to other persons or circumstances shall not be affected thereby.

Statutory Authority

§§[12.1-13](#), [38.2-223](#) and [38.2-2229](#) of the Code of Virginia.

### **Editor's Note**

In 20:21 VA.R. 2239 to 2242 June 28, 2004, the chapter heading was added.

Research and Practice References

43 Am. Jur. 2d, Insurance §§22, 23, 1486, 1794, 1822, 1823.

12 Am. Jur. Trials 549, Actions on Life Insurance Policies.

21 Am. Jur. Trials 229, Action Against Insurer for Bad Faith Failure to Settle Claim.

6 Am. Jur. Proof of Facts 2d 247, Insurer's Wrongful Refusal to Settle Within Policy Limits.

34 Am. Jur. Proof of Facts 2d 155, Insured's Failure to Comply with Cooperation Clause of Liability Policy.

Annotations

Liability policy coverage for insured's injury to third party's investments, anticipated profits, goodwill, or the like, unaccompanied by physical property damage, 18 A.L.R. 5th 187.

Validity, construction, and effect of "regulatory exclusion" in directors' and officers' liability insurance policy, 21 A.L.R. 5th 292.

Validity and operation of "step-down" provision of automobile liability policy reducing coverage for permissive users, 29 A.L.R. 5th 469.

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