

# COMMONWEALTH OF VIRGINIA

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## Administrative Letter 2013-05

**To:** All Insurers and Other Interested Parties

**Re:** Legislation Enacted by the 2013 Virginia General Assembly

We have attached for your reference summaries of certain statutes enacted or amended and re-enacted during the 2013 Session of the Virginia General Assembly. **The effective date of these statutes is July 1, 2013, except as otherwise indicated in this letter.** Each organization to which this letter is being sent should review the summaries carefully and see that notice of these laws is directed to the proper persons, **including appointed representatives**, to ensure that appropriate action is taken to effect compliance with these new legal requirements. Copies of individual bills may be obtained at <http://lis.virginia.gov/lis.htm> or via the links we have provided in the summary headings. You may enter the bill number (not the chapter number) on the Virginia General Assembly Home Page, and you will be linked to the Legislative Information System. You may also link from the Legislative Information System to any existing section of the Code of Virginia. All statutory references made in the letter are to Title 38.2 (Insurance) of the Code of Virginia unless otherwise noted. All references to the Commission refer to the State Corporation Commission. The federal Patient Protection and Affordable Care Act is referred to as the ACA throughout this letter.

Please note that this document is a **summary** of legislation. It is neither a legal review and interpretation nor a full description of the legislative amendments affecting insurance-related laws during the 2013 Session. Each person or organization is responsible for review of relevant statutes.

Sincerely

A handwritten signature in cursive script that reads 'Jacqueline K. Cunningham'.

Jacqueline K. Cunningham  
Commissioner of Insurance

Attachment

## TABLE OF CONTENTS

<b>Chapter Number and Bill Number</b>	<b>Page Number</b>
Chapter 9 (House Bill 1396) .....	3
Chapter 11 (House Bill 1510) .....	3
Chapter 12 (House Bill 1527) .....	3
Chapter 13 (House Bill 1528) .....	3
Chapter 27 (House Bill 2118) .....	3
Chapter 29 (House Bill 2155) .....	4
Chapter 75 (House Bill 1655) .....	4
Chapter 93 (Senate Bill 777).....	4
Chapter 136 (Senate Bill 780) and Chapter 210 (House Bill 1784) (Effective January 1, 2014)	4
Chapter 146 (Senate Bill 984).....	5
Chapter 203 (House Bill 1731) .....	5
Chapter 212 (House Bill 1838) .....	5
Chapter 257 (House Bill 1607) .....	5
Chapter 473 (Senate Bill 1059).....	5
Chapter 497 (House Bill 2023) .....	6
Chapter 595 (House Bill 2246) and Chapter 791 (Senate Bill 1261).....	6
Chapter 653 (Senate Bill 1243).....	6
Chapter 670 (HB 1769) and Chapter 679 (SB 922) .....	6
Chapter 709 (House Bill 2138) .....	7
Chapter 751 (House Bill 1900) Effective January 1, 2014.....	7

### **Chapter 9 ([House Bill 1396](#))**

The bill amends § 38.2-1878 (Insurance Agents Chapter) to eliminate a provision that caps, at \$10 per customer, the incidental compensation that a vendor of portable electronics may provide to its employees or authorized representatives who sell portable electronics insurance.

### **Chapter 11 ([House Bill 1510](#))**

The bill amends § 38.2-4504 (Dental or Optometric Services Plans Chapter) to provide that each dental or optometric services plan must be offered through a nonstock corporation. The Commission shall consider the sufficiency of contingency reserves and subject the nonstock corporation to the requirements of Chapter 17 (Virginia Life, Accident and Sickness Insurance Guaranty Association) when considering the nonstock corporation's application for changing its status from an agent to a nonagent nonstock corporation. Subsection E of § 38.2-4504 is amended to require the nonstock corporation to maintain a contingency reserve of \$4 million.

### **Chapter 12 ([House Bill 1527](#))**

The bill amends Subsection B of § 38.2-2107 (Fire Insurance Policies Chapter) to clarify that excess fire coverage may be written as a stand-alone policy or as an endorsement to a policy. The bill also removes the requirement that insurers indicate in the title or the heading of the policy whether the coverage is written on a primary or excess basis.

### **Chapter 13 ([House Bill 1528](#))**

The bill amends § 38.2-231 (General Provisions Chapter) to permit insurers to send termination notices on commercial liability policies only to the *first* named insured listed in the policy's declarations page. Previously, the law required termination notices to be sent to all named insureds.

### **Chapter 27 ([House Bill 2118](#))**

The bill amends Subsection B of § 38.2-305 (Insurance Policies and Contract Provisions Chapter) to clarify which notice requirements are applicable to all insurers, and which requirements are applicable only to health maintenance organizations.

### **Chapter 29 ([House Bill 2155](#))**

The bill amends § 38.2-4809.1 (Surplus Lines Insurance Law Chapter). The bill makes technical changes to facilitate the transfer of the administration of premium license tax from the Commission to the Department of Taxation.

### **Chapter 75 ([House Bill 1655](#))**

The bill amends § 38.2-2201 (Liability Insurance Policies Chapter) to provide a mechanism by which health care providers may seek a valid assignment of medical expense benefits provided under a motor vehicle insurance policy in cases where the injury being treated arises out of the ownership, operation, or use of a motor vehicle. The bill provides that the health care provider must give the injured person notice of his rights regarding assignment of such benefits at the time he is asked to make the assignment. The injured person is not required to sign or initial the assignment in order to receive care. The amendment provides that the insured may wish to consult his insurance agent or an attorney before executing the form permitting the assignment of his medical expense benefits.

### **Chapter 93 ([Senate Bill 777](#))**

The bill restates and clarifies § 38.2-232 (General Provisions) relating to notice of a lapse or pending lapse of the types of life and accident and sickness policies or annuities as defined in §§ 38.2-102 through 38.2-109. The bill clarifies that the provisions of Subsection A of § 38.2-232 shall not apply to group policies, contracts or plans if the insurer, health services plan, or health care plan either (i) as a general business practice provides written notices of premium due; or (ii) has furnished a written notice separate from the policy that failure to pay premiums on a timely basis will result in lapse of the policy, contract or plan.

### **Chapter 136 ([Senate Bill 780](#)) and Chapter 210 ([House Bill 1784](#)) (Effective January 1, 2014)**

The bill amends various sections of Title 38.2 to repeal the requirements for the offer of an open enrollment period for individual accident and sickness contracts. Section 58.1-2501 is also revised to change the tax rates for plans defined in §§ 38.2-4201 (Health Services Plans) and 38.2-4501 (Dental or Optometric Plans) for taxable years after 2012 to 2.25 per cent of the direct gross subscriber fee income for all subscription contracts. The tax rate of .75 for open enrollment contracts and individual contracts referenced in that subdivision ends at tax year 2013. **The provisions of the bill are effective on January 1, 2014.**

### **Chapter 146 ([Senate Bill 984](#))**

The bill adds a new section in the General Provisions chapter to require insurers that issue a settlement check of at least \$5000 in satisfaction of a third party claim to a claimant's attorney to send a notice to the claimant within five days that such check has been sent to his attorney. The bill holds the insurer harmless if the notice is not given or is defective. The bill further provides that the failure to give notice or the provision of defective notice (i) does not create a cause of action against an insurer by any person; (ii) does not create a defense for any person in any such action; or (iii) does not in any way affect the settlement or satisfaction for which the payment was made by the insurer. **The bill is applicable to all lines of insurance except those lines subject to §§ 38.2-4214 and 38.2-4319.**

### **Chapter 203 ([House Bill 1731](#))**

This bill adds a new article in the Insurance Agents chapter. Storage unit insurance authority is added to the lines of insurance that may be sold by those holding a limited lines property and casualty agent license.

### **Chapter 212 ([House Bill 1838](#))**

The bill amends § 38.2-1822 (Insurance Agents) to prohibit an agent whose license has been revoked or voluntarily surrendered from directly or indirectly owning and operating, controlling or being employed in any manner by an insurance agent or agency during the time period in which the individual is unlicensed unless otherwise authorized by the Commission.

### **Chapter 257 ([House Bill 1607](#))**

The bill amends §§ 38.2-231 (General Provisions), 38.2-325 (Insurance Policy Provisions), 38.2-2113 and 38.2-2114 (Fire Insurance Policies) and 38.2-2208 and 38.2-2212 (Liability Insurance Policies) pertaining to termination notice requirements in certain insurance policies to permit insurers to send *cancellation notices* electronically, if the insured and insurer have agreed to conduct business by electronic means.

### **Chapter 473 ([Senate Bill 1059](#))**

The bill amends § 38.2-4509 (Dental or Optometric Plans) to subject dental and optometric plans to two additional requirements applicable to insurers which offer dental and optometric coverages. Dental and optometric plans must pay interest on claim payments not made in a timely manner if the interest is greater than \$5.00. The bill also

amends § 38.2-4509 to require dental and optometric plans to file their 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.**

#### **Chapter 497 ([House Bill 2023](#))**

The bill adds a new article to the Insurance Agents chapter to add travel insurance to the lines of insurance that may be sold by those holding a limited lines property and casualty agent license. The bill allows the sale of travel insurance by a travel retailer (i) holding a limited lines P&C license or (ii) under the direction and license of a travel insurance agent.

#### **Chapter 595 ([House Bill 2246](#)) and Chapter 791 ([Senate Bill 1261](#))**

The bill adds a new article to the Accident and Sickness Insurance Policies chapter that identifies prohibited activities for health benefit exchange navigators as described in the ACA. The Commission is required to monitor and report on the activities of navigators in the Commonwealth.

#### **Chapter 653 ([Senate Bill 1243](#))**

The bill amends § 38.2-3411 (Accident and Sickness Insurance Provisions) and 38.2-4319 (Health Maintenance Organizations) to require that health maintenance organizations provide coverage for newborn children in the same manner as coverage is provided in health insurance policies and subscription contracts with family coverage.

#### **Chapter 670 ([HB 1769](#)) and Chapter 679 ([SB 922](#))**

The bill 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 established by the Secretary of the U.S. Department of Health & Human Services pursuant to § 1321 of the ACA. The performance of plan management functions is contingent upon the availability of federal funding sufficient to pay the operating expenses necessary to carry out the functions, the necessary technological infrastructure being made available to the Commission and no other impediments to prevent the Commission from carrying out the functions. 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.

### **Chapter 709 ([House Bill 2138](#))**

The bill establishes the Health Insurance Reform Commission to monitor the implementation of the ACA; determine whether Virginia should establish a state-based health insurance exchange; make recommendations regarding the health benefits that should be included within the scope of the essential health benefits provided under health insurance products offered in Virginia; provide assessments of existing and proposed mandated health insurance benefits and providers; develop recommendations to increase access to and reasonable costs for health insurance coverage; and ensure a robust health insurance market. Staff of the Bureau of Insurance will assist the Health Insurance Reform Commission in the assessment of the impact and efficacy of legislation proposing mandated health insurance benefits or providers. The bill also repeals the establishment article for the Special Advisory Commission on Mandated Health Insurance Benefits.

### **Chapter 751 ([House Bill 1900](#)) Effective January 1, 2014**

The bill amends many sections of Title 38.2 addressing requirements applicable to accident and sickness insurance policies and related products in order to be consistent with relevant requirements of the ACA. The bill also repeals provisions relating to the essential and standard plans in § 38.2-3431. **The provisions of bill are effective January 1, 2014.**