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Administrative Letter 2003-5

TO: All Insurers, Health Services Plans, Health Maintenance Organizations (HMOs) and Other Interested Parties

RE: Legislation Enacted by the 2003 Virginia General Assembly

We have attached for your reference staff summaries of certain statutes enacted or amended and re-enacted during the 2003 Session of the Virginia General Assembly. **The effective date of these statutes is July 1, 2003, except as otherwise indicated in this letter.** Each organization to which this letter is being sent should review the attachments 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://legis.state.va.us/. 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.

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 2003 Session. Each organization is responsible for legal review of the statutes pertinent to its operations.

Cordially,

Alfred W. Gross
Commissioner of Insurance

AWG/dyh

Attachment

BUREAU OF INSURANCE
ADMINISTRATIVE LETTER 2003-5

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FINANCIAL REGULATION

TAXATION, FILINGS AND ASSESSMENTS OF INSURERS

Chapter 371 (Senate Bill 853)

This bill amends § 38.2-406 to allow insurance companies to file assessment reports either on a form furnished by the State Corporation Commission (Commission), the current statutory requirement or on a form furnished by the insurer or its vendor if the form has been approved by the Commission prior to its use.

Chapter 372 (Senate Bill 854)

This bill amends §§ 58.1-2500 and 58.1-2507 to specify that penalties owed for failure to pay license taxes timely are due within 14 days of the date of the notice to the delinquent insurer. If such additional amounts are not paid when due, the Commission may suspend or revoke the insurer's license. The measure also provides for refunds of overpayments of penalties, and defines the terms "preceding year's tax" and "tax."

LIFE AND HEALTH

Chapter 221 (Senate Bill 943)

This bill amends § 38.2-3432.3 to clarify that preexisting condition exclusions relating to pregnancy existing on the effective date of coverage may be imposed in the case of individual health insurance, only with respect to persons who are **not** considered eligible individuals as defined in § 38.2-3430.2 of the Code of Virginia.

Chapter 243 (House Bill 1737)

The bill adds § 38.2-3418.14 and amends § 38.2-4319 to provide coverage for lymphedema. The bill is applicable to insurers proposing to issue individual or group accident and sickness insurance policies providing hospital, medical and surgical, or major medical coverage on an expense-incurred basis; corporations providing subscription contracts; and health maintenance organizations (HMOs) providing health care plans. The coverage includes benefits for equipment, supplies, complex decongestive therapy, and outpatient self-management training and education for the treatment of lymphedema, if prescribed by a health care professional legally authorized to prescribe or provide such items under law. A managed care health insurance plan, as defined in Chapter 58 (§ 38.2-5800 et seq.), may require the health care professional to be a member of the plan’s provider network. The network should include sufficient health care professionals that are qualified by specific education, experience, and credentials to provide the covered benefits. The bill prohibits insurers, corporations,

and HMOs from imposing copayments, fees, policy year or calendar year, or durational benefit limitations or maximums for benefits or services that are not equally imposed on all individuals in the same benefit category.

The bill applies to insurance policies, contracts, and plans delivered, issued for delivery, reissued, renewed or extended on or after January 1, 2004, or at any time thereafter when the term is changed or the premium adjustment is made. The bill does not apply to short-term travel, accident only, limited or specified disease, or individual conversion policies or contracts, nor to policies or contracts designed for issuance to persons eligible for coverage under Title XVIII of the Social Security Act (Medicare), or any other similar coverage under state or federal governmental plans.

Chapter 399 (Senate Bill 944)

This bill amends §§ 38.2-3503 and 38.2-3504 to clarify the applicability of provisions enacted by Chapter 540 (2000 House Bill 1236) regarding refunds of the unearned portion of premiums for individual accident and sickness insurance policies. The bill clarifies the refund requirements applicable to policies issued prior to January 1, 2001, as distinguished from policies delivered, issued for delivery, renewed or extended on or after January 1, 2001. The amendments in this bill make no substantive change to the aforementioned legislation enacted in 2000.

Chapter 462 (Senate Bill 1081)

This bill amends § 38.2-3418.3 regarding the offer of coverage for morbid obesity. The bill revises the provision that insurers may not restrict access to surgery for morbid obesity based upon dietary standards or any other criteria not approved by the National Institutes of Health (NIH) since the NIH does not approve standards or criteria. The amended bill provides that standards and criteria, including those related to diet, used by insurers to approve or restrict access to surgery for morbid obesity shall be based upon current clinical guidelines recognized by the National Institutes of Health.

Chapter 645 (House Bill 2234)

This bill amends §§ 38.2-3431 to allow the Essential and Standard Health Benefit Plans (Plans) to include "co-payment, co-insurance, deductible or other cost-sharing arrangements as those terms are defined in § 38.2-3407.12. The bill also exempts the Plans from the mandated provider requirements of §§ 38.2-3408 and 38.2-4221.

Chapter 654 (House Bill 2803)

This bill amends §38.2-3540.1 to entitle a policyholder that is a "large employer," as defined in subsection B of §38.2-3431 to receive, upon request, a summary of claims charges incurred and the amount paid with respect to those claims for the most recent 24-month period when requested in writing. The policyholder is entitled to a listing of enrollees for whom combined claims payments exceed $50,000 for the most recent 12-month period, and for the preceding 12-month period if not previously provided with information regarding the enrollment status of these enrollees within the last 12-months. And, the policyholder is entitled to the total enrollment in each membership type as of the end of the most recent available 12-month period. The requested information is to be provided at the time the insurer provides claims experience according to subsection A. The record shall be made available to the policyholder within 15 days of the written request when the request is made at least 30 days prior to the date of premiums or contractual terms of the policy being amended. Personal or privileged information about an individual that is protected from disclosure under Chapter 6 (§ 38.2-600 et seq.) of this title, or under any other applicable federal or state law or regulation is not to be disclosed. No policyholder shall be required to pay for information requested in accordance to this section.

The bill applies to all policies, contracts, and plans delivered, issued for delivery, reissued, or extended on or after July 1, 2003 or at any time after the effective date when any term of any such policy, contract, or plan is changed or any premium adjustment is made. The requirements of this statute are not applicable to HMOs.

Chapter 699 (House Bill 1826)

This bill adds § 38.2-508.5 to prohibit any health insurer from adjusting premiums, benefits, or contractual terms of existing individual health insurance coverage based upon its reevaluating of the individual's health status or claim experience, at the renewal date of the insurance contract. This prohibition does not apply to adjustments to the premium if the insurer, subsequent to issuing the policy, learns of information that was not disclosed in the underwriting process and that, if known, would have resulted in higher premiums. Such adjustment, rescission or amendment is also permitted (i) when an insurer provides certain lifestyle-based good health discounts and (ii) when an insurer removes waivers or riders that limit coverage for specific named preexisting conditions.

Insurers are reminded that the term "individual health insurance coverage", as used in this legislation, incorporates the definition of that term as found in § 38.2-3431 of the Code of Virginia. The term, then, is broader than simply referring to traditional "individual" policies.

Chapter 752 (Senate Bill 1195) and Chapter 767 (House Bill 2601)

This bill permits a health maintenance organization to offer to its subscribers deductibles, copayments, and cost-sharing provisions in accordance with applicable state law. "Copayment" is defined as an amount that an enrollee is required to pay in order to receive a specific health care service. "Deductible" is defined as an amount an enrollee is required to pay out-of-pocket before the health care plan begins to pay the costs associated with health care services. The total deductible or deductibles for basic health care services per calendar or contract year must not exceed the maximum annual deductibles permissible pursuant to 26 U.S.C. § 220 or any successor thereto. If the federal program for the plans is terminated, the plan may offer deductibles that do not exceed the deductibles from the last year of the federal program plus $50 per calendar year afterward. The Commission may consider if a plan's deductibles are reasonable and may use at least the following: (i) whether the deductibles will adversely affect accessibility for enrollees, (ii) whether that plan has demonstrated the ability to monitor and implement the deductible plans, and (iii) whether the plan's level of capitalization and financial condition are adequate. The bill also clarifies that limitations applicable to **both** copayment **and** deductible features must be disclosed in the evidence of coverage, in addition to the disclosure requirements previously required.

AGENTS LICENSING/CONTINUING EDUCATION

Chapter 412 (House Bill 1937)

This bill amends § 38.2-1800 to amend the definition of "limited burial insurance authority." The bill increases the maximum amount per certificate of burial association group life insurance that may be solicited with respect to members of such an association from $5,000 to $7,500.

Chapter 621 (House Bill 2802)

This bill amends §38.2-1839 to require that any incentives, bonuses, overrides, or any other form of remuneration, whether direct or indirect, that an insurance consultant is entitled to, must be specified in the consultant's contract.

Chapter 871 (Senate Bill 877)

This bill amends §§ 38.2-1833 and 38.2-1834 to clarify that an insurer's failure to pay penalties imposed as a result of late payment of appointment processing fees and renewal appointment fees constitutes nonpayment of the required fees, and such failure

constitutes grounds for termination of the appointment. The bill specifies that the Commission must give due notice and a final opportunity for the insurer to submit the overdue payment and penalty fees before actually initiating appointment terminations.

Chapter 979 (House Bill 1905)

The bill amends §§ 38.2-1800, 38.2-1824, 38.2-2411 and 38.2-2412, and adds a new Article 6.2 to Chapter 18 of Title 38.2, relating to the licensing of surety bail bondsmen. Section 38.2-1800 is amended to include a new definition for surety bail bondsman. "Surety bail bondsman" is defined as a person licensed pursuant to Article 6.2 of Chapter 18 of Title 38.2 who sells, solicits, or negotiates surety insurance on behalf of insurers licensed in this Commonwealth, pursuant to which the insurer becomes surety on or guarantees a bond that has been posted to assure performance of terms and conditions specified by order of an appropriate judicial officer as a condition of bail.

Surety bail bondsman is included as a type of agents' license under Chapter 18 of Title 38.2. Other provisions require that the Commission furnish to the Clerk of the Supreme of Virginia and the clerk of every circuit court in Virginia a list of the names of all surety bail bondsmen licensed pursuant to Article 6.2 of Chapter 18 of Title 38.2, who are appointed agents of fidelity and surety insurers; and require that the Commission give notice to the Clerk of the Supreme Court of Virginia and each circuit court in Virginia when it revokes, suspends or terminates the license of any surety bail bondsman licensed pursuant to Article 6.2 of Chapter 18 of Title 38.2.

The bill sets forth provisions for the licensing of surety bail bondsmen:

- Section 38.2-1865.6 provides for the licensing of property and casualty insurance agents as surety bail bondsmen. A surety bail bondsman license shall terminate immediately upon the termination of the licensee's property and casualty insurance agent license. The Commission is required to maintain a database containing information on surety bail bondsmen licensees.
- Section 38.2-1865.7 sets forth the requirements to apply for a surety bail bondsman license. Applicants are required to (i) submit an application; (ii) pass a written prelicensing examination; (iii) submit to fingerprinting for the purpose of obtaining national criminal history record information; (iv) submit copies of each power of attorney; and (v) submit a nonrefundable application fee.

  In addition to the requirements previously set forth, business entity applicants are required to file the following documents, as applicable: (i) a domestic corporation shall have filed its articles of incorporation with the Clerk of the Commission and shall have been issued a charter by the Commission; (ii) a domestic limited liability company shall have filed its articles of organization with the Clerk of the Commission and shall have been issued a certificate of organization by the Commission; (iii) a domestic limited partnership shall have

received a certificate of limited partnership from the Clerk of the Commission; and (iv) a domestic partnership shall have filed its partnership agreement with the clerk of the appropriate court. The business entity must also designate a licensed Virginia Surety Bail Bondsman to be responsible for the business entity's compliance with the insurance laws, rules and regulations of Virginia.

- Section 38.2-1865.8 sets forth the term of licenses and requirements for renewal. Licenses are issued for a term of two years and may be renewed for two years upon the filing of an application, the payment of the renewal application fee, and the submission to fingerprinting for the purpose of obtaining national criminal history record information. The Department of State Police shall forward to the Commissioner of the Bureau of Insurance of the State Corporation Commission or his designee the results of the records search from the Central Criminal Records Exchange and the Federal Bureau of Investigation. Licensees whose license as a surety bail bondsman has been revoked, suspended, terminated or nonrenewed will be required to satisfy all pre-licensing requirements before a new license may be issued.
- Section 38.2-1865.9 sets forth the fees for obtaining a surety bail bondsman license.
- Section 38.2-1865.10 sets forth reporting requirements to the Commission. Licensed surety bail bondsmen are required to report to the Commission (i) a change in residence or name; (ii) use of an assumed or fictitious name; (iii) felony convictions; (iv) final disposition of an administrative action; and (v) the appointment of a new licensed responsible producer by a business entity licensed as a surety bail bondsman, when its original licensed responsible producer is removed. If a new licensed responsible producer has not been appointed and the Commission notified of this new appointment within 30 calendar days, the business entity's license as a surety bail bondsman shall terminate immediately.
- Section 38.2-1865.11 sets forth the grounds by which the Commission shall (i) place a licensed surety bail bondsman on probation; (ii) refuse to issue or renew a license; and (iii) revoke or suspend a license.
- Section 38.2-1865.12 sets forth the following:

> Subsection A - The rights of an applicant to request a hearing if the Commission (i) refuses to issue it a surety bail bondsman license; or (ii) revokes or suspends an existing license. An applicant, to whom a license has been refused or revoked, may not reapply until five years from the date of the Commission's order denying the application or revoking the license, or another period of time prescribed by the Commission in its order.

Subsection B – The Commission shall not revoke or suspend an existing license until the licensee is given an opportunity to be heard. The Commission is required to give 10 calendar days' notice of the time and place of the hearing, if a hearing is requested.

Subsection C - The Commission may immediately suspend a license upon receipt of documentation that the licensee has been convicted of a felony. The Commission must immediately give notice to the licensee of the suspension and of the time and place of a hearing regarding the suspension.

Subsection D – The Commission may suspend, revoke or refuse the license of a business entity if a violation by an individual licensee, acting on behalf of the business entity, was known to be a violation by a partner, officer or manager of the business entity.

Subsection E – In addition to, or in lieu of, a denial, suspension or revocation of a license, a person may be subject to a penalty pursuant to § 38.2-218.

Subsection F –The Commission may impose any penalty or remedy even if the person's license has been surrendered, terminated, suspended, revoked, or has lapsed by operation of law.

- Section 38.2-1865.13 sets forth the provisions for the licensing of nonresidents including (i) the need to satisfy all licensing requirements; (ii) applicability of a border state's law with similar requirements to Virginia; (iii) reciprocal agreements with other states and Canada; (iv) notification to the Commission of a change of address; (v) termination of a license at any time if the nonresident's home state has terminated, suspended or revoked a similar license; and (vi) that a license issued by another state shall not be deemed to authorize an applicant to be a resident surety bail bondsman in his home state unless the home state requires submission of a national criminal history record report, and such report does not indicate that the applicant has been convicted of a felony.

PROPERTY AND CASUALTY

Chapter 222 (Senate Bill 978)

This bill amends § 38.2-1919 by requiring rate service organizations to report experience data for any classification of workers' compensation insurance that includes coal mining for the most recent five years for which the data is available.

Chapter 266 (House Bill 2524)

This bill amends §§ 38.2-604 by allowing the information practices notice to be given orally at the time of application, when application is made by phone, as long as the notice is given in writing or in electronic form no later than when the policy is delivered. The bill also amends §§ 38.2-604, 38.2-604.1, and 38.2-612.1 by allowing an agent who is shopping a current policyholder's renewal coverage to be deemed in compliance from the information practice notice requirement and the opt-out notice requirement as long as the agent has given the required notice within the previous 12 months. The bill also changes subsection B 3 of § 38.2-604 so that insurers only have to describe the circumstances under which they make disclosures pursuant to § 38.2-613 when those circumstances occur with such frequency as to indicate a general business practice.

Chapter 283 (Senate Bill 993)

This bill amends § 38.2-2206 (pertaining to uninsured and underinsured motorist coverage) by allowing judgement against an immune defendant to be entered in the name of "Immune Defendant." The bill specifies that in the case where an immune owner or operator of a vehicle is negligent, judgement will be enforceable against the insurer and any other defendant as though the judgement were entered in the actual name of the immune defendant.

Chapter 361 (House Bill 2267)

This bill amends § 38.2-517 by prohibiting insurers from (i) failing to disclose that the insured or claimant is not obligated to use the repair or replacement facility or service or products recommended by the insurer or its representative; and (ii) failing to disclose to the insured or claimant if the insurer or its representative has a financial interest in the recommended repair or replacement facility. The bill also adds a new subsection B to § 38.2-517 by stating that insurers are not required to pay more for motor vehicle repair services or products than the prevailing competitive charges for equivalent services or products charged by similar contractors or repair shops within a reasonable geographic or trade area of the repair facility. The bill further states that offering an explanation to the policyholder or claimant of the extent of the insurer's obligation under this section does not constitute a violation of the section.

The provisions of the act will apply to motor vehicle insurance policies issued or renewed on or after July 1, 2003.

Chapter 387 (Senate Bill 1131)

This bill amends §§ 38.2-231, 38.2-2113, 38.2-2208 by allowing insurers another method of providing proof of mailing. Insurers may obtain a written receipt from the post office showing the date of mailing and the number of items mailed. Insurers will also have to retain a mailing list showing the name and address of the insureds to whom the notices were mailed as well as a signed statement that the written receipt from the post office corresponds to the mailing list.

Chapter 415 (House Bill 1948)

This bill amends § 38.2-612 by prohibiting insurers and agents from basing an adverse underwriting decision solely on the loss history of a previous owner of the property to be insured.

Chapter 488 (House Bill 1777)

This bill amends subsection E of § 38.2-2801 by specifying that the limits of liability for policies written in the medical malpractice joint underwriting association may not exceed $2 million for each claimant under any one policy and $6 million for all claimants under one policy in any one year. This change makes subsection E of § 38.2-2801 consistent with the provisions set forth in § 8.01-581.15 pertaining to the cap on recovery for medical malpractice actions.

This is emergency legislation and became effective upon the date of its passage.

Chapters 543/553 (House Bill 2535 and Senate Bill 1284)

These bills amend §§ 38.2-2114 and 38.2-2212 and add new §§ 38.2-2126 and 38.2-2234. Under these bills, insurers will be prohibited from non-renewing private passenger automobile and homeowners insurance policies solely on the basis of a person's credit information. If credit information is used in conjunction with another reason as the basis for the non-renewal, such credit information must be pulled within 120 days of the termination date. Insurers that use credit information will be required to advise their applicants of this fact. Insurers will also have to give a notice stating that, if the insured questions the accuracy of the credit information, the insurer will be obligated to reevaluate the insured based on corrected information. Insurers will have to disclose the primary factors that were used as the basis for any adverse action taken as a result of a person's credit information or advise the applicant or insured that this information is available upon request. If an insurer uses credit information in rating or tier placement of its renewal business, the information must be updated every three years, unless the insured requests an update sooner. Insurers are not required to update more than once during each policy term. Insureds who do not have sufficient credit to produce a credit

score must be given a neutral score or rated or underwritten excluding the use of credit or in accordance with the insurer's guidelines or rules. Certain factors are prohibited from being used to determine a credit score. These include disputed credit information; insurance inquiries and non-consumer initiated inquiries; medical trade lines; income, gender, address, zip code, ethnic group, race, color, religion, marital status, or nationality; and total available line of credit. Also, insurers are prohibited from considering, as more than one inquiry, multiple automobile or home mortgage lender inquiries made within 30 days of one another. Insurers may not take an adverse action based on a credit report procured more than 90 days prior to the date the policy was first written. Insurers may make exceptions for insureds impacted by catastrophic medical problems or other catastrophic events.

The provisions of §§ 38.2-2126 and 38.2-2234 apply to new policies not later than January 1, 2004, and to renewal policies not later than April 1, 2004. The provisions of §§ 38.2-2114 and 38.2-2212 take effect on July 1, 2003.

Chapter 707 (House Bill 2266)

This bill amends the Consumer Protection Act under Title 59.1 (§ 59.1-207.5:1). It prohibits glass shops that sell, install, or replace motor vehicle glass from offering or providing a coupon, credit, or rebate to pay all or part of an insured's deductible unless the glass shop charges no more than the prevailing market rate for such services.

Chapter 729 (Senate Bill 878)

This bill adds § 38.2-613.2 to require insurers, agents, and insurance-support organizations to implement a comprehensive written information security program that includes administrative, technical, and physical safeguards for the protection of policyholder information. The information security program must be designed to ensure the security and confidentiality of policyholder information, protect against any anticipated threats or hazards to the security or integrity of the information, and protect against unauthorized access to or use of the information that could result in substantial harm or inconvenience to any policyholder.

Chapters 756/761 (House Bill 2512 and Senate Bill 1154)

These bills amend § 38.2-2204 by allowing named driver exclusions under personal umbrella and excess policies. The exclusion must be requested in writing by the first named insured and acknowledged in writing by the excluded driver.

NOTE: This section of the Code applies to policies of bodily injury or property damage liability insurance covering liability arising from the ownership, maintenance, or use of any motor vehicle, aircraft, or private pleasure watercraft. Nothing in these newly

enacted chapters limit the applicability of subsection B to motor vehicle insurance policies. Consequently, named driver exclusions under personal umbrella and excess policies may be applied to operators of motor vehicles, aircraft, or private pleasure watercraft.

Chapter 799 (House Bill 2544)

This bill adds a new section to Chapter 26 (§ 38.2-2600 et seq**.)** which allows home protection companies to include a provision in their contracts that requires the contract holder to submit to binding arbitration in any dispute between the contract holder and the home protection company.

Chapter 897 (House Bill 2048)

This bill makes a number of changes to Chapter 50 of Title 38.2 pertaining to the Virginia Birth-Related Neurological Injury Compensation Program. The changes include amending the definition of "birth-related neurological injury," amending the exclusive remedy provision, allowing the Workers' Compensation Commission to make awards up to $100,000 for infants who die within 180 days of birth, requiring annual audits of the Fund's accounts by an independent CPA, removing the Board's authority to reduce the participating physician and participating hospital annual assessments, and changing the make-up of the board of directors.

Chapter 930 (House Bill 2606)

This bill amends § 38.2-2102 by stating that the standard fire insurance policy will not cover losses caused by certified acts of terrorism as defined in the federal Terrorism Risk Insurance Act if the insured has refused coverage offered pursuant to the federal act. This only applies to commercial fire policies. Section 38.2-2107 has also been amended to allow insurers to write excess fire insurance policies.

Chapter 1026 (Senate Bill 1316)

This bill amends subsection A of § 38.2-2801 by clarifying that the Commission must activate a joint underwriting association (JUA) if, after investigation, notice, and hearing, it finds that medical malpractice insurance cannot be made reasonably available in the voluntary market for a significant number of any class, type, or group of health care providers. The second enactment clause of the bill requires the Commission to begin an investigation of the voluntary medical malpractice insurance market immediately to determine if a JUA is needed and to report its findings to the Governor and the Commerce and Labor committees no later than December 31, 2003.

FINANCIAL REGULATION

Chapter 387/765 (Senate Bill 1131/House Bill 2462)

This bill amends escheat statutes by adding a new § 55-210.4:2, concerning unclaimed demutualization proceeds, requiring that unclaimed property payable or distributable in the course of a demutualization of an insurance company is presumed abandoned five years after the earlier of () the date of last contact with the policyholder or (ii) the date the property became payable or distributable. A related amendment at § 55-212.12 clarifies reporting requirements generally; a second enactment clause clarifies reporting for reports filed on November 1, 2003.

Chapter 440 (House Bill 2609)

This bill amends § 38.2-3221 to authorize a temporary reduction to 1.5% in the interest rate to be used for calculating the nonforfeiture benefit amounts for individual deferred annuities issued on or after April 1, 2003, and before July 1, 2005. The rate is a minimum value or floor, not a mandate. An “emergency” provision makes the legislation effective and “in force from its passage.”

The measure has an emergency provision, which makes the legislation effective from date of passage.

Chapter 566 (Senate Bill 850)

This bill amends § 15.1-2704 (powers of local government group self-insurance pools) to correct an outdated reference to workers’ compensation plans. This housekeeping amendment conforms the statute with regulatory practices under which the assets of group self-insurance pools established pursuant to Chapter 27 of Title 15.2 are invested in securities and investments permitted by regulation adopted by the State Corporation Commission, for local government group self insurance pools pursuant to §15.2-2706 in 1987, and codified at 14 VAC 5-360-50.

Chapter 717(House Bill 2613)

This bill repeals Chapter 57 (§ 38.2-5700 et seq.) in Title 38.2 and enacts a new Chapter 60 (§ 38.2-6000 et seq.), thereby replacing the existing Viatical Settlement Act with a more comprehensive statute based on model legislation adopted by the National Association of Insurance Commissioners (NAIC) in 2000. The bill also makes conforming amendments in provisions at §§ 38.2-1800 and 38.2-1865.1 concerning viatical settlement brokers. The measure authorizes persons who are licensed by the

Commission as viatical settlement providers and viatical settlement brokers to negotiate, effectuate, and assume responsibility for viatical settlement contracts. A viatical settlement contract is an agreement by which the owner of an insurance policy may accept compensation or anything of value, which is less than the expected death benefit of an insurance policy, in exchange for the assignment, transfer, sale, or other conveyance of the death benefit or ownership of any portion of the insurance policy. This new act regulates viatical settlements regardless of whether the transaction involves a life settlement or affects a policy insuring a chronically or terminally ill person. The act adopts new definitions that recognize the securitization activities of viatical settlement brokers and providers; a separate provision specifies that this act does not preempt the Virginia Securities Act. Other provisions (i) permit life and annuities insurance agents to be licensed as viatical settlement brokers, (ii) provide that a licensed insurer shall be prohibited from transacting the business of a viatical settlement provider, (iii) expand notice and disclosure requirements applicable for viatical settlement brokers and viatical settlement providers, (iii) define and prohibit "fraudulent viatical settlement acts," and (iv) require viatical settlement brokers and viatical settlement providers to develop anti-fraud plans. Additional provisions prohibit the viatication of life insurance policies that are less than two years old except when the insured is chronically or terminally ill, or when specified conditions are met involving conversion rights arising out of a group or individual policy or the disposal of ownership rights in a closely held corporation.