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HEALTH AND AUTOMOBILE INSURANCE POLICY PROBLEMS

REPORT OF THE VIRGINIA ADVISORY LEGISLATIVE COUNCIL to THE GOVERNOR and THE GENERAL ASSEMBLY OF VIRGINIA

COMMONWEALTH OF VIRGINIA
Department of Purchases and Supply
RICHMOND
1965

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VIRGINIA ADVISORY LEGISLATIVE COUNCIL

Richmond, Virginia, December 13, 1965

To:

HONORABLE A. S. HARRISON, JR., *Governor of Virginia*

and

THE GENERAL ASSEMBLY OF VIRGINIA

In recent years there have been brought to the attention of members of the General Assembly of Virginia an increasing number of complaints regarding policies of certain types of casualty insurance. With respect to policies of accident and sickness insurance, which includes insurance against hospitalization costs, many persons have felt that the coverage afforded by their policies did not measure up to that which they thought that they had when the policy was purchased. Complaint has been also made that some insurers have made too frequent use of certain technical defenses. As to policies covering operation of motor vehicles, there have been complaints of concellations and failures to renew, or the offering of policies only at increased rates, which the insureds felt were not warranted.

As a result of these complaints, two resolutions were introduced in the General Assembly during the 1964 Regular Session dealing with these subjects. They were combined into a single resolution by which the Virginia Advisory Legislative Council was directed to consider these problems. The text of this resolution is as follows:

HOUSE JOINT RESOLUTION NO. 43

Directing the Virginia Advisory Legislative Council to make a study and report on matters relating to accident, sickness, hospitalization, and automobile liability insurance policies.

Whereas, the public seeks to protect itself against the hazards of accidents and illness by purchasing accident and sickness and hospitalization insurance policies so as to be able to pay hospital and medical bills and, in some cases, to assure an income while disabled; and

Whereas, some accident and sickness and hospitalization insurance policies contain confusing language, have provisions for cancellation which appear to be contrary to the public interest, and the unwary are thereby deceived into believing that they are protected when, in fact, the protection is slight and in some cases nonexistent; and

Whereas, in many instances, insurance companies writing automobile liability insurance policies have cancelled, without cause, policies held by citizens of Virginia; and

Whereas, by virtue of such cancellation, without good and sufficient reason, those citizens subjected to same, together with other members of their household, have experienced extreme difficulty in obtaining other insurance without being subjected to high rates of premium and low rates of coverage under the Assigned Risk Plan; and

Whereas, these inequities and other related matters caused by cancellation of liability policies should be studied with reference to legislation to correct any abuse or practices which may be found to exist or instigated by insurance companies or others enjoying the privilege of doing business or being licensed to market their product in the Commonwealth of Virginia; and

Whereas, it is proper that these matters should be thoroughly reviewed to determine what additional legislation, if any, should be adopted in order to allow the State Corporation Commission greater latitude in policing the sale and issuance of accident and sickness and hospitalization insurance policies; now, therefore, be it

Resolved by the House of Delegates, the Senate concurring, That the Virginia Advisory Legislative Council is hereby directed to make a study and report upon the following: 1. All matters relating to accident and sickness and hospitalization insurance policies being written in this Commonwealth. The Council shall especially consider, among other matters, the relationship between the premiums and the benefits, cancellation clauses, restrictions upon coverage, how such policies are written, and means whereby the public may be protected in the purchase of such insurance. 2. On all matters and practices relating to cancellation of, or the refusal to issue automobile liability policies and premium ratings on such policies of automobile liability insurance, and to further determine if any unwarranted practices or abuses exist, and, if so, recommend laws designed to correct said abuses, and any related matters thereto. In making the study, the Council shall avail itself of the assistance of the Commissioner of Insurance and shall consult with the State Corporation Commission in all matters relating to the study. The Council shall consider the experience of other states in this type of insurance. All agencies of the State shall assist the Council upon request. The Council shall conclude its study and make its report to the Governor and the General Assembly not later than October one, ninetten hundred sixty-five.

Pursuant to this resolution the Council selected William F. Stone, of Martinsville, attorney and member of the Senate of Virginia, as Chairman of a Committee to make the initial study and report to it. Selected to serve with Senator Stone as members of the Committee were the following: Fred W. Bateman, of Newport News, attorney and member of the Senate of Virginia; Nathan Bushnell, III, of Martinsville, Administrator, Martinsville General Hospital; Dr. Thomas S. Edwards, of Charlottesville, physician; Robert V. Hatcher, Jr., of Richmond, a partner in the Baker-Cockrell Insurance Agency; Rieves S. Hodnett, of Martinsville, insurance agent; Nathan B. Hutcherson, Jr., of Rocky Mount, attorney and member of the House of Delegates; David B. Kinney, of Arlington, attorney; J. Sloan Kuykendall, of Winchester, attorney; Charles L. McCormick, III, of Halifax, attorney; Eugene Meyung, Jr., of Charlottesville, attorney and Division Manager, State Farm Insurance Company; Garnett S. Moore, of Pulaski, attorney and member of the House of Delegates; William T. Muse, of Richmond, Dean, University of Richmond Law School;

Robert L. Riggs, of Hopewell, Plant Manager, Allied Chemical Corporation; Sydney S. Small, of Roanoke, former Vice-President, Norfolk and Western Railway Company; Gordon R. Trapnell, of Arlington, actuary; and Caleb D. West, Jr., of Newport News, insurance agent.

The Committee organized by selecting Messrs. Hutcherson and Moore as Co-vicechairmen of the Committee. John B. Boatwright, Jr. and G. M. Lapsley served as Secretary and Recording Secretary, respectively, to the Committee.

The Committee held public hearings in Richmond, Roanoke, and Arlington County. It solicited from the public information as to instances in which individuals believed they had been unfairly treated by insurance companies and checked with these companies as to the facts in each case. It reviewed the practices of the Bureau of Insurance of the State Corporation Commission with respect to the policing of the issuance and sale of such policies and the investigation of complaints.

The Committee, after reviewing the information presented to it and which it was able to develop concerning the subjects under study and after due deliberation made its report to the Council. The Council has carefully considered the report of the Committee and makes the recommendations set forth below. Because of the dual nature of the study, it makes its report in two parts, dealing, respectively, with the subject matters which the Council was directed to study by House Joint Resolution No. 43.

PART I

Accident and Sickness and Hospitalization Insurance Policies

Throughout this part of the report the terms "hospital insurance" or "insurance policies" refer to accident and sickness insurance.

Summary of Recommendations

1. An abstract of the inclusions in and exclusions from coverage of accident and sickness insurance policies approved for issuance in this State should be required to accompany each such policy. The abstract should be subject to the same supervision as are advertisements pertaining to health insurance and litigation should not be sustainable upon such abstract.

2. Upon completion of the application, both the applicant and the agent should be required to sign a statement that the applicant has read the application or had it read to him, and that he realizes any false statement or representation may result in loss of coverage and prosecution under Virginia law.

3. False or fraudulent statements to secure benefits under such policy of insurance should be a misdemeanor; the penalty should apply to any applicant or agent or other person who knowingly participates in the perpetration of any such fraud.

4. Each such policy should contain a provision that the insured may, within ten days of the delivery of the policy, return the same to the company and receive a rebate of the entire premium paid.

5. The period during which such policies are contestable for causes other than fraud, now fixed by statute at three years, should be reduced to one year.

6. Insurers should not be permitted to deny liability under such policies because of congenital defects unless the insured knew or might reasonably have been expected to know of such defects.

7. At the option of the insurer in any case, the standard NAIC limitation may be set on the amount which an insured can recover in excess of actual loss under more than one such policy providing indemnity against expenses incurred due to accident or sickness.

8. Since insurance costs are directly related to costs of hospitalization, every effort should be made to provide adequate funds under the existing State and Local Hospitalization Program.

9. An advisory board should be created to advise the Commissioner of Insurance in connection with the administration of the laws regulating accident and sickness insurance. The Board shall consist of nine members, who shall be appointed by the Governor and confirmed by the General Assembly. The members shall receive no compensation, but shall be paid necessary expenses incurred in the execution of their offices. Five of the members shall be appointed from the State at large and four shall be appointed from the insurance industry. The Commissioner of Insurance shall serve in an advisory capacity on the Board. The terms of the members shall be four years except for initial appointments which shall be as follows:

(a) three members shall be appointed for terms of 2 years;

(b) three for terms of 3 years; and

(c) three for terms of 4 years.

10. The General Assembly, by adopting an appropriate resolution, should encourage the insurance industry to develop specific outpatient diagnostic and treatment coverages.

Historical Development

Some insurance policies are required by statute either to be in identical form and language, as in the case of the standard fire policy, or to contain certain specified provisions, as in the case of bodily injury and property damage liability insurance for motor vehicles. These policies are in fields in which the insurance industry has had many years or many decades of experience. On the other hand, policies of hospitalization insurance were practically unknown thirty-five years ago. The concept of prepayment of hospitalization costs originated with the Baylor University Plan in Waco, Texas, in 1929. During the next ten years the Blue Cross Plans spread rapidly and Blue Shield Plans providing surgical and medical services on a prepayment basis followed.

At the same time some insurers began writing insurance coverage on an indemnity basis against the hazards of accident and sickness and to cover costs of hospitalization, but these were largely experimental in nature and were not nearly so widespread as the service type plans offered by Blue Cross, Blue Shield and some other medical groups. In 1940 less than 4,000,000 persons were covered by this type of insurance whereas more than 8,000,000 were covered by medical, surgical and hospitalization service plans.

As experience accumulated, however, the insurance companies began putting together different packages of coverages which proved more and more popular. By 1951, approximately one-half of persons who were protected against hospital costs were covered by such insurance. By the last

year for which figures were available to the Committee, 1963, the total was 88,127,000 persons covered by insurance as against 68,880,000 under the various service plans.

To accomplish this rapid growth the insurers have had to experiment considerably in their underwriting and widely differing types and expense of coverages have been developed. Purchasers have been confronted with a great variety of choices, ranging from the type of policy which was widely sold some years ago to give protection against costs resulting from a single disease such as poliomelitis, to the type of policy which generally parallels the provisions of the service plans and offers benefits sufficient to substantially meet even the soaring costs of modern hospital care.

We cite this history of the growth of hospitalization insurance to emphasize the point which is made by the insurance industry, that restrictive legislation specifying exactly what may or may not be offered in such policies would inevitably have hampered the development of adequate coverage, especially in view of the rapid strides made by the medical profession in recent years in the development of new and frequently very expensive treatments for disease. For example, it was found by experience that insurance policies which would have been thought to be completely adequate under most circumstances have failed to offer protection against the catastrophic effects of long continued illnesses requiring intensive treatment. As a result, the rapidly growing field of major medical coverage has developed which, written with a deductible feature and on a coinsurance basis for a comparatively small fee, provides protection against the disastrous costs of catastrophic illness.

As a result of this experimentation, and the highly competitive nature of the industry, there are actually hundreds of different policies which have been approved for sale by the Commissioner of Insurance and are being sold in the State of Virginia. These policies are written both on an individual basis and as group contracts and it was to be expected that, in many cases, persons have purchased policies which did not fully meet their needs. However, in the course of our study there have been presented to us certain complaints which we feel are justified and for which we recommend measures which we believe will minimize the likelihood of such occurrences in the future.

There are certain basic requirements for hospital insurance policies now in the law; we feel that certain amendments and additions to these requirements can give additional protection to the public without being unduly burdensome on the insurers.

Reasons for Recommendations

1. The provisions of health insurance policies are technical and complex and frequently run to several pages of type. The average layman, even if he reads the policy, may not be capable of fully understanding just what he is buying. One of the complaints most frequently heard concerning accident and sickness policies is that the insured thought he would be covered under certain circumstances but finds when illness occurs that he is not protected.

For instance, insured patients admitted to State or mental hospitals often do not realize that their policies may not cover these institutions. Also, a patient insured against the cost of a private duty nurse may receive care from a Licensed Practical Nurse and later discover that his policy covers only Registered Nurses. Rather than require insurers

who insure these services to include the institutions and individuals in question, which may interfere with the ability of insurers to improvise and improve coverage, it is recommended that the insurance industry be required to better explain to applicants the type and extent of coverage they are entitled to under the particular policy of insurance.

Through the cooperation of a large group of insurance companies, there has recently been provided coverage under what is called the "Virginia-North Carolina 65" policy. In connection with this policy, there has been prepared and is available to prospective purchasers an excellent summary showing in abstract form what is available under each of the coverages offered. This abstract is extremely helpful to those desiring to secure coverage under such policies and we feel that it is possible for all accident and sickness policies to be so summarized.

All policies of accident and sickness insurance issued in this State must be submitted for approval to the Commissioner of Insurance. We recommend that this approval be extended to the suggested abstract of the provisions of the policies.

The abstract should be subject to regulations similar to those that now govern advertising relating to health insurance policies. For instance, if the policy covers hospitalization only in institutions that have facilities for major surgery, the abstract would make this clear. In order to protect the insurers against suits on the basis of the brief description of benefits, exclusions, and other provisions in the abstract, litigation should not be sustainable upon the abstract but only upon the provisions of the policy itself.

2. One of the grounds most frequently used by insurance companies to avoid liability on policies is that of misstatements of material facts in the application for the policy. It should be emphasized that most insurance companies and most insurance agents strive to be careful to secure correct factual information from a prospective purchaser and most purchasers try to supply information which is accurate to the best of their knowledge. Unfortunately, there are some companies which seek to deny liability for any possible cause and use even a bona fide mistake of fact on the part of an applicant as an excuse to contest the payment of benefits under the policy. Also, there are agents who, in order to make a sale, may not encourage an applicant to include or accurately describe everything which is required on the application form. There are also, of course, persons who will seek to conceal material facts in an effort to defraud insurance companies.

We recommend that a provision be inserted in the statute requiring that at the time the prospective purchaser signs an application for insurance, he also be required to sign a statement that he has read the policy application, or had it read to him, and he realizes that any material misstatement may result in loss of coverage. The agent should also be required to sign a similar statement to the same effect. This will call the attention of honest applicants to the fact that either a misstatement or an error of fact can deny them the protection they seek and it will also put the dishonest applicant on notice that his attempted fraud may not be successful.

3. False or fraudulent statements or representations by the applicant or the agent taking the application are equally abhorrent to the very foundations of the principles of insurance. To overcome the apparent inducement on the part of the applicant to attempt to fraudulently secure benefits, and on the part of the agent to misstate or fail to include in

the application material information which would void the contract or prevent a sale, it is recommended that any applicant or agent or other person who knowingly participates in the perpetration of any such false or fraudulent statements shall be guilty of a misdemeanor.

4. We have previously called attention to the fact that the provisions of insurance policies, generally, are complex and technical and even an informed person may have to study his policy in order to know just what it provides. An individual may have been misled by a glib salesman into applying for a policy which does not really meet his needs. We therefore recommend that an insured be given a period of ten days following the issuance of a policy in which he may examine it, or have someone examine it for him, and if he finds it does not furnish the protection he seeks. return it to the issuing company and be repaid the entire amount of premium which he has paid. This will not only give him time to examine the policy closely, but should impress upon him the desirability of doing so.

5. § 38.1-349 of the Code currently requires policies of accident and sickness insurance to contain a provision to the effect that after three years from issuance, no misstatements in the application, unless made with intent to defraud, shall be used to void the policy or deny a claim for loss arising after such period. Some companies search diligently for any possible means of denying claims and the defense of a misstatement as to a pre-existing condition is one which all too frequently is interposed by these insurers. This may be true even though the applicant, at the time of making application for the insurance, did not know of the existence of the condition. We see no reason why the contestable period should be longer for accident and sickness insurance policies than it is for other policies of insurance. We do not believe that a reduction in this time limit would seriously affect the insurance industry as a whole. Many policies are written with lesser time limits now. The hospital and medical service plans appear to be able to operate satisfactorily although the maximum period for exclusions with such plans is generally one year. We doubt that many persons can anticipate illnesses that will cause expenses after one year, and seek coverage under accident and sickness policies to cover such a condition. We therefore recommend the reduction in the period of contestability to one year.

6. Where the pre-existing condition consists of a congenital defect, we feel that a different element is involved. We have known of cases where companies have denied liability because of conditions of which the applicant was unaware at the time of making application and which were of dubious materiality to the risks assumed by the company. We think the test here should be that of good faith and recommend that even during the contestable period, this defense may not be used by a company in the case of a congenital defect unless the applicant knew or might reasonably have been expected to know of the existence of the condition which is claimed as a defense.

7. The present law (§ 38.1-350) permits inclusion in accident and sickness insurance policies of a nonduplication and coordination of benefits provision which is intended to prohibit an insured from taking out multiple policies and thereby collecting, in the event of accident or illness, sums in excess of his actual costs or losses. The present law permits the use of many different provisions to specify the liability of each insurer where there is more than one policy with combined benefits in excess of 110% of medical expenses. Few of these provisions specify in sufficient detail how the liability in such a situation will be divided. As a result

there have been occasions when none of the insurers would pay the benefits; each claiming that the other insurer was liable. The NAIC recommendation would substitute a permissive provision that would specify exactly which insurer would be liable for how much in virtually every possible circumstance.

The present provision has also been found deficient, with respect to major medical and noncancellable or guaranteed renewable coverages, because it is limited to "coverage of which the insurer has not been given written notice." Thus, this provision contemplated that a company could protect itself by cancellation, nonrenewal, or reducing benefits if it had notice of overinsurance. But if the insured now buys guaranteed renewable or noncancellable coverage and later adds additional coverage causing overinsurance, all he has to do is notify the original insurer. The insurer, not having the right to cancel or fail to renew, cannot reduce benefits because it has been given notice of the other coverage.

We recommend that the statute be amended to permit an insurance company, at its option, to include a nonduplication and coordination of benefits provision to provide for reduction of benefits where other coverage exists without regard to whether the insurer knew of the existence of the other coverage when the policy was written prior to the claim. The insured should be allowed to recover at least 110% of his reasonable, necessary and customary expenses, but inter-company payments to correct overpayments and underpayments which may have occurred in the processing of the claim by several insurers should be permitted and the law should allow recovery from an insured for overpayment due to duplicate coverage.

8. Many persons who thought themselves adequately protected when they purchased their policies of accident and sickness insurance are subject to a rude awakening when they are hospitalized and the bill is received. Hospital costs have increased steadily in recent years as a result of general inflation and, more particularly, as new and expensive techniques have been developed by the medical profession to treat diseases. One of the factors in the cost of hospital treatment is that most hospitals are called upon to treat charity patients for the costs of whose care the local governments are, under our system, theoretically responsible. It is estimated that as much as 10% of the costs paid by pay patients in hospitals is attributable to losses incurred by the institutions on nonpay patients. The State of Virginia was a pioneer in attempting to meet this problem by the institution, in 1946, of a program called the "State and Local Hospitalization Program" under which the State is obligated to match, dollar for dollar, amounts put up by the localities for hospital care of indigent and medically indigent persons. There are, however, two serious deficiencies in the program. There has never been enough money for the State to fully match these costs and in many instances the localities have not been able to carry the full burden. Furthermore, participation in the program is voluntary as to each county and city government and many of them have elected not to participate. Hospitals, especially those with governmental affiliations, feel an obligation to take care of persons needing treatment regardless of their ability to pay. The resulting deficits, if the hospital is to remain in business, must be made up from charges to those who can pay. We recommend that every effort be made to supply the Department of Welfare and Institutions, which administers the program, with sufficient funds to meet the State's commitments under the program.

9. The Commissioner of Insurance of the State of Virginia is charged by statute with administering the laws relating to insurance and is able,

on receipt of a complaint, to request the company involved to give him information concerning the circumstances. However, his investigative powers are limited, as is his staff, and further, as is not generally realized, he has no power to compel a company to take action in a specific case unless a violation of law can be established. Due to the wide range of coverages offered under accident and sickness policies and the complexities thereof, some states, including our neighboring state of North Carolina, have found it advisable to have a group consisting of representatives of the insurance industry and of the public to advise the regulatory authorities concerning the administration of the laws, and practices of insurance companies. We are advised that this has been of genuine value in controlling improper claim practices. We recommend the creation of such an advisory board in Virginia. Such a body would be of great assistance to the Commissioner in policing the practices of the industry and in addition would assure the public that, if they have a justifiable complaint to register against an insurer, there will be a forum in which such a complaint can be presented.

10. It has long been the policy of the State of Virginia to encourage initiative on the part of the individual to secure reasonably adequate insurance protection and to encourage initiative on the part of the insurance industry to develop, where possible, coverage in critical areas of need.

At present, hospital insurance is limited primarily to indemnify an individual for expenses incurred while a patient in a hospital. However, there are many conditions which arise that require the utilization of hospital facilities for definitive diagnosis without requiring hospitalization. We believe this results in increased hospital admissions which disproporitonately increases insurance costs.

Therefore, we urge the General Assembly to adopt an appropriate resolution urging the insurance industry to develop policies of insurance which will provide benefits for specific outpatient treatment and diagnostic services.

A resolution is attached which, if adopted, will carry out this recommendation.

PART II

Policies of Insurance Dealing with the Operation of Motor Vehicles

The Problem

A motor vehicle is a necessity for most people but the driver must also be able to operate it on the highways. With the steady increase in traffic density, no person, however careful, can be certain that he will never cause an accident. Not even one who is "judgment proof," can afford not to have liability insurance; in some cases even bankruptcy will not discharge the liability which can be imposed by a judgment for damages. Yet an increasing number of persons are unable to get insurance or are forced to pay rates which seem to them exorbitant.

The problem divides itself in two categories—cancellation and failure to renew policies. As to most policyholders, cancellation is not a problem. The family policies and the "package" policies, which are the types most widely used, contain provisions limiting cancellation by the insurer to certain prescribed causes, such as nonpayment of premium, fraud in obtain-

ing the policy, violation of the terms of the policy, having the driver's license suspended or revoked, being afflicted with certain diseases, or conviction of driving while intoxicated, hit-and-run driving, and certain specified felonies. These conditions are not in the "basic policy" but this is used principally for assigned risks who themselves constitute one of the principal troublesome problems.

Difficulty with cancellation arises principally when a policy is initially issued. The company may, at any time within the first sixty days, cancel for any reason. Frequently a person who has been carried by one company for a considerable period of time is solicited away from that company and places his insurance with another insurer. This solicitation is done in good faith by the agent of the new company but there may be factors in the underwriting practices or policies of his company of which the agent may not know, and which induce cancellation. The person cancelled is in the unenviable position of then trying to secure coverage elsewhere with that cancellation on his record. Although no insurer would admit it, we are convinced that some underwriters investigate no further than the statement on the application that the applicant has been cancelled, before refusing to accept the application. For this reason, in all too many cases, a person whose insurance is cancelled winds up being an assigned risk.

The problems in connection with failure to renew are similar. Some companies will not renew the insurance of an individual who has a single accident. A person insured by such a company can be almost certain that if he has an accident he will become an assigned risk.

We have diligently sought answers to these problems. One answer—compulsory insurance—with the insured being required to purchase insurance and the companies being required to write it, has been tried in other jurisdictions. Experience there has shown that this approach is to be avoided if at all possible. Under our free enterprise system, we believe that a business contract, which an insurance policy is, should be entered into only at the election of the contracting parties. However, when any business is given the protection afforded insurance companies, the public is entitled to protection from practices which smack of deception. Bait advertising, unreasonable cancellation and other abuses are the stock-in-trade of some insurance companies. The industry must help to clean its shirts. The recommendations of this report are designed to permit the parties to deal at arms length and to interfere as little as possible with normal business practices.

We do not intend any wholesale indictment of the insurance industry. The industry, according to its spokesmen, already has troubles enough in the automobile insurance field. The several increases in rates which have been recently granted from time to time by the State Corporation Commission, based on information presented to it by the companies, corroborate this. It is our considered opinion that a few companies are giving the industry a bad name. The measures herein recommended will tend to alleviate this situation. Stronger measures are available if need be.

SUMMARY OF RECOMMENDATIONS

1. At least ten days written notice, sent by registered or certified mail with return receipt requested, should be given by any insurer desiring to cancel a policy of insurance covering ownership or operation of a motor vehicle. Such notice should contain a statement advising the insured that, if he considers himself aggrieved, he may apply to the Commissioner of Insurance for a review of the insurer's action.

2. Insurers should be required to furnish reasons for failure by the companies to renew policies, on request of persons whose policies are terminated, any such communication to be privileged.

3. The State Corporation Commission, through the Commissioner of Insurance, should make more vigorous efforts to police the segment of the insurance industry concerned with policies relating to ownership and operation of automobiles; special attention should be given, under present powers of the Commission, to prevention of incomplete or misleading advertising.

4. If the insurance industry is to avoid more stringent regulation, which could seriously hamper its operations, it must better police itself. In particular, the associations of casualty insurers and their member companies should review their underwriting practices and make necessary changes so that a previous cancellation will not be made the sole basis for a refusal to issue an insurance policy.

5. All applications for original policies of automobile liability insurance should have printed in red in bold face type on the face of the application a warning to the effect that the policy, if issued, may be cancelled at the option of the insurer at any time within the first sixty days.

6. The Division of Motor Vehicles should make more rigorous use of its powers to examine and re-examine holders of operator's and chauffeur's licenses in order that the insurance companies may be relieved of the present burden of trying to determine who are and are not safe drivers.

7. Extracts of convictions for violations of the motor vehicle laws from the Division of Motor Vehicle files should be given prima facie evidential value in administrative hearings conducted by the Division.

8. When an applicant for insurance is placed under the assigned risk plan and is found by the Division of Motor Vehicles to have a bad record of traffic offense convictions or accidents the Division should be required within thirty days to give such person an examination as to his driving ability and physical condition and to review his driving record. If the Division suspends or revokes the operator's or chauffeur's license of the individual, it should notify the insurer to whom his insurance has been assigned, who would then be permitted to cancel the insurance.

9. Questions as to specific physical conditions which may impair a person's ability to drive should be placed on applications for original issuance or renewal of operator's and chauffeur's licenses. If the answers to such questions indicate a necessity therefor, the Division of Motor Vehicles should be empowered to require a medical examination as a prerequisite to consideration of the issuance of the license.

10. Every effort should be made by the Division of Motor Vehicles to improve its system of maintenance and furnishing of traffic records.

11. The present statute permitting confiscation of a vehicle driven by a person whose license has been suspended or revoked, with protection to innocent owners or lienors, should be amended to provide for impoundment of the vehicle for a period of sixty days when its value is too small to justify the expense of the forfeiture proceedings. The garage or other establishment where such a vehicle is impounded should be authorized to sell the vehicle, if necessary, to pay the storage charges.

12. The fee for license plates for an uninsured vehicle should be increased from $20 to $50.

REASONS FOR RECOMMENDATIONS

1. As noted above, most insurance policies relating to ownership or operation of motor vehicles contain provisions which in effect permit cancellation within the first sixty days of coverage, we are advised that elimination of this provision would in essence require prior underwriting of all new policies and not only would hamper agents in the solicitation of new business but would increase the cost of doing business and eventually the cost of insurance to the public. There is no provision in the law which prevents such cancellation being effected without giving the insured time to try to secure other coverage. Persons buying insurance should have protection against finding themselves suddenly without it, and accordingly recommend that no cancellation, whether within the first sixty days or at any other time during the policy period, can be effective unless ten days written notice be given to the policyholder by registered or certified mail, with return receipt requested.

Most people are not aware of the fact that the insurance industry is regulated. The notice of cancellation which we recommend should further advise the policyholder of the fact that there is a regulatory agency—the Bureau of Insurance—which can and will take action to minimize the possibility of arbitrary action by an insurer.

2. One of the complaints most frequently heard during our investigation was that a person might have his policy cancelled, or, being insured, would be notified that his policy would not be renewed, without any statement of the reason for such cancellation or failure to renew. Representatives of the insurance industry have advised us that they feel that failure to reveal the reason for termination may be justified in many cases because revealing this information to the insured might subject the company to a suit for libel in case it acted on what was, in fact, erroneous information.

We do not presume to decide whether this reason is a legally valid one; however, we believe that it would be to the advantage of the insurance industry as well as to the persons whose policies have been terminated to require the companies to disclose the reason for termination; and to insure that the company making such a disclosure would not subject itself to any legal liability by reason of any error in the information on which it acted, we further propose that such a statement be made a privileged communication.

3. While neither the State Corporation Commission or its agent, the Commissioner of Insurance, has the power to compel any insurance company to cover any person except as a statutory assigned risk, the Commission does have the power to insure that no company which is guilty of flagrant abuses can continue to do business in Virginia. We do not think that statutes can be drawn to cover all cases of unreasonable or arbitrary actions by some insurance companies. We have recommended that persons whose insurance is cancelled be informed of the regulatory power of the Commission, and feel confident that the Commission can and will take proper remedial action.

In one area especially we think that careful study and possible action by the Commission is indicated. § 38.1-52 of the Code prohibits misrepresentations or false advertising of policy contracts. We are of opinion that certain advertisements of automobile insurance, while not actually false, are not in the best interests of either the insurance industry or the public. We recommend that the Commission consider the adoption of regulations in this field to protect the public.

4. The insurance industry is not unaware of the problems we have discussed in this report. The industry is well organized and is, we believe, conscious of the public's interests and its own. We urge serious consideration by the industry of the problems discussed in this report, and such action as may be found possible to alleviate them.

We have earlier mentioned one particular problem for which we do not believe that legislative action is the solution—the fact that a person whose insurance has been cancelled finds great difficulty in securing other coverage at normal rates, regardless of the cause of cancellation. This, in our opinion, represents a serious deficiency in underwriting practices, and should be corrected.

5. We have mentioned above a situation which all too frequently arises when a person who may have been insured by one company for years makes application for insurance in another company and finds that, due to different policies in effect in that company, his application is not approved and the insurance is cancelled. It is understandable that such a person might feel aggrieved, and more so if, as sometimes happens, the company refuses to give a reason for the cancellation. We believe that persons purchasing insurance coverage in a new company should be alerted to the existence of the right of cancellation by the company within the first sixty days and accordingly recommend that all applications for original policies of automobile insurance have printed in red in bold face type on the face of the application a warning to the effect that the policy, if issued, may be cancelled by the insurer for any or no reason at any time within the first sixty days it is in effect.

6. The Commissioner of the Division of Motor Vehicles is apparently given, under §§ 46.1-430 and 46.1-436 of the Code, broad powers as to the suspension or revocation of operator's and chauffeur's licenses. Under the former section a suspension or revocation of up to one year may be made if it is proved to the satisfaction of the Commissioner or the hearing officer that the individual is, among other things, "incompetent to drive a motor vehicle" or "habitually a reckless or negligent driver" or has "committed a serious volation of the motor vehicle laws of this State." Under § 46.1-436 the Commissioner may revoke or suspend for up to five years "upon any reasonable ground appearing in the records in the Division" and in addition may suspend or revoke for the same period registration certificates and registration plates for any motor vehicle owned by such person.

However, we are advised that through court decision and otherwise, the broad discretion given by the statute on its face to the Commissioner has been greatly circumscribed. The end result has been that the total number of cases in which the Commissioner has been able to take disciplinary action under these statutes amounts to less than 500 a year.

In comparison, there are approximately 60,000 persons who have been placed under the voluntary assigned risk plan by the insurance industry. (The voluntary assigned risk plan is a plan whereby, under an agreement among insurance companies, the assigned risk pool may require a company to issue limited coverage for a person who cannot obtain insurance at regular rates and through the usual channels. In addition, there is a statutory assigned risk plan whereby the State Corporation Commission may require an insurer to issue a policy to an individual as a condition of continuing to do business in Virgina. Risks are assigned among the companies on the basis of total insurance in force.)

It is true that approximately one-half of the individuals who are assigned risks have no record of accidents or convictions on file at the

Division of Motor Vehicles. These include persons who insurance statistics have shown to be more accident-prone than the average driver, such as unmarried males under 25, certain older persons, divorced persons, and persons of known habits which make them so-called "moral risks." Nevertheless, the wide disparity between the number of licenses which are suspended or revoked by the Commissioner and the number of persons for whom insurance companies are unwilling to write insurance at regular rates is so great as to justify the assertion that the insurance companies are being forced to discourage operation of motor vehicles by many persons who should not be permitted to drive legally on the highways at all.

We have attempted in subsequent recommendations to strengthen the hands of the Division of Motor Vehicles in its attempt to keep unsafe drivers off the highways and we strongly urge that the Division intensify its efforts towards this end.

7. The language of § 46.1-430 requires that the condition or event which is sought to be used as the basis for a suspension or revocation must be "satisfactorily proved at the hearing," and one of the cases dealing with administrative hearings states that "the fact the statute contemplates must be proved by clear and reliable evidence at a fair trial." This has come more and more to mean that an individual, although he may have been duly convicted in a court of law, nevertheless when he comes before the Commissioner or his agent at an administrative hearing must in effect be convicted again before action can be taken to suspend or revoke his license, and, of course, a court appeal is permitted from the action of the Commissioner.

We do not believe that the framers of the statute contemplated this result. At the very least, the burden of proof should be shifted and the Commissioner should be able to take action on the record before him unless the individual concerned can furnish material evidence to cast doubt on the regularity and fairness of the court trial in which he was duly convicted of the offense charged.

We accordingly recommend that, in administrative hearings before the Commissioner of Motor Vehicles or his agent, duly authenticated records of prior convictions shall be given prima facie weight as evidence that the convictions were proper. We believe this will facilitate and expedite the work of the Division in connection with holding such hearings and we do not see how the substantive rights of an individual who is the subject of such a hearing can be prejudiced thereby.

8. We have noted above that approximately one-half of the persons placed under the voluntary Assigned Risk Plan are persons who have records of convictions or accidents on file with the Division of Motor Vehicles. One feature of the Plan is that in every case the record of the applicant, and others who drive his car, are obtained from the Division. This appears to offer an excellent opportunity for improving the coordination between the activities of the Division in removing unsafe drivers from the roads and the screening of drivers which is of necessity done by the insurers as a matter of sound underwriting.

We recommend that within thirty days of the time the Division furnishes to the assigned risk pool a record showing either accidents or convictions, the Division be further required to give such person an examination as to his driving ability and physical condition. If the Division, based on such examination and consideraton of the individual's record, suspends or revokes his operator's or chauffeur's license, it should be required to notify the insurer to whom the coverage was assigned.

The insurer, under the regulations of the Assigned Risk Plan, can cancel the insurance.

9. It seems desirable, as an ideal, to have medical examinations also before persons are licensed to operate vehicles on our highways and on renewal of license. This is impractical because of the expense involved and it is impossible to provide medical facilities for such examinations.

Certain persons, however, such as epileptics whose seizures have not been controlled, are obvious hazards when operating automobiles. We feel action should be taken to detect such individuals and propose for them a medical as well as a driving examination as a prerequisite to the issuance of a license. This does not mean that such persons would of necessity be barred from driving. The driving records, for instance, of persons whose seizures are controlled, appear to be better than that of the average licensed operator. We accordingly recommend that the application form for either an original license or a renewal contain questions designed to reveal whether the individual suffers from one of the physical conditions deemed most dangerous to safe operation of a vehicle; if the applicant answers such a question in the affirmative, the Division should be empowered to require a medical examination before it will issue or renew the license.

10. The Division of Motor Vehicles is currently maintaining routine records on more than 2,000,000 operators and chauffeurs. It receives annually approximately 350,000 reports of convictions of traffic offenses. In addition there are approximately a quarter of a million accident reports which must be received and processed.

Requests for records from commercial sources, for which a charge is made, are received at the rate of better than 40,000 a month. (The Division will return to highway funds during this fiscal year approximately $475,000 from this source of revenue). In addition, there is a great volume of reports furnished to courts and to law enforcement officers for which no charge is made. In view of the tremendous volume of paper work involved in the keeping and furnishing of these records it is not surprising that there has been a considerable time lag between the receipt of a request for information and the furnishing of a record. This has been complicated recently by the fact that the Division is converting to automated operation; this has meant that millions of additional records have had to be reprocessed for storage in computers and memory banks.

There have been many complaints due to delays, and occasional errors, in the furnishing of traffic records. It is expected that with full automation this situation will be vastly improved. We urge that this process be expedited to the fullest possible extent.

11. Neither the efforts of the insurance companies to reduce the number of unsafe drivers on the road by denying coverage nor revocation or suspension of licenses by courts and the division of Motor Vehicles is of any value in the case of an individual who is so irresponsible that he will drive without insurance or drive illegally after his license has been taken away from him. We were cited to many records showing that persons whose licenses had been suspended or revoked had, when thereafter apprehended for driving during the period of suspension or revocation, received only minor punishment when brought into court.

In an effort to meet this situation, the 1964 Regular Session of the General Assembly enacted a statute providing for forfeiture of a motor vehicle being driven by a person whose license had been suspended or revoked, with protection for innocent owners and lienors. This statute has not proved practical. The forfeiture provision serves its purpose where the value of the vehicle justifies its use; however, the procedure is complicated and expensive and in many cases the price received on sale of the

vehicles involved would not meet the costs of the proceedings. We recommend that, as an alternative, when the value of the vehicle does not exceed $200, it be impounded for a period of sixty days. In order to secure its release after impoundment the owner would be required to pay the storage charges. If he does not do so, the vehicle could be sold by the establishment in which impounded for accrued charges by a process which would be much simpler in operation than the present confiscation and sale procedure. The sixty day period is set since it will deprive the owner of the vehicle of its use for longer than is generally now the case, but will not result in charges in excess of the value of the vehicle.

12. There are still many persons in Virginia who will pay the $20 fee for an uninsured vehicle rather than go to the expense of providing themselves with a liability insurance policy. These persons are generally those who could not respond in damages in the event of causing an accident and while our uninsured motorist endorsement gives some protection to the public, it is far from adequate.

The minimum cost of a liability insurance policy is approximately $50.00. We recommend that the fee for the issuance of license plates for an uninsured motor vehicle be raised to this figure.

CONCLUSION

We express our appreciation to the Committee for its contribution in the formulation of this report, staffs of the Bureau of Insurance and the Division of Motor Vehicles, and to representatives of insurance companies and groups of companies, members of the public who assisted in the making of this study.

We emphasize again the need for corrective action by the State Corporation Commission and its proper agencies and by that great segment of the insurance industry which is interested in sharp practices. The public will demand stern measures unless such action is taken. We hope this word of warning will suffice.

Bills and resolutions to carry out our recommendations are attached.

Respectfully submitted,

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C. W. CLEATON
JOHN WARREN COOKE

Statement of Messrs. Cleaton, Frost, Hutcheson and Richardson

While we have signed the above report, we take exception to Recommendation No. 12 in Part II thereof.

C. W. Cleaton
Tom Frost
J. C. Hutcheson
A. H. Richardson

A BILL to amend the Code of Virginia by adding a section numbered 38.1-348.1 requiring policies of accident and sickness insurance to be accompanied by abstracts setting forth in summary form the inclusions in and exclusions from the coverage of such policies; to require approval by the Commissioner of Insurance of such abstracts.

Be it enacted by the General Assembly of Virginia:

That the Code of Virginia be amended by adding a section numbered 38.1-348.1, as follows:

§ 38.1-348.1. Every policy of accident and sickness insurance hereafter issued in this State for delivery to a purchaser in this State shall be accompanied by an abstract giving in summary form in nontechnical language the inclusions in and exclusions from coverage under the policy. Each such abstract shall, prior to its use, be submitted to and approved by the Commissioner of Insurance. Such abstract shall be furnished only for the information of the prospective purchaser and shall not be made the basis for any claim against the issuing insurer or any other person.

2. This Act shall be in force on and after January 1, 1967.

A BILL to amend the Code of Virginia by adding sections numbered 38.1-348.2, 38.1-348.3 and 38.1-348.4, requiring both the applicant for a policy of accident and sickness insurance and the insurance agent to sign a certain statement with reference to the application, providing punishment for fraud in connection with the securing of such insurance, prescribing a warning notice to be attached to such policies, and requiring that the insured be able to return such policies within the first ten days of the policy period and receive a refund of the premium paid.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia be amended by adding sections numbered 38.1-348.2, 38.1-348.3 and 38.1-348.4, as follows:

§ 38.1-348.2. Every application for a policy of accident and sickness insurance shall contain a certificate, signed by both the applicant and the insurance agent, substantially to the following effect: "The undersigned applicant and agent certify that the applicant has read, or had read to him, the completed application and that he realizes that any false statement or misrepresentation therein may result in loss of coverage under the policy and, if knowingly made, in prosecution under Virginia law."

§ 38.1-348.3. Any agent, physician, or other person who shall knowingly secure or cause to be secured by means of misrepresentations or false, fraudulent or untrue statements a policy of accident and sickness insurance on any person not in an insurable condition shall be punished as provided in § 38.1-40.

§ 38.1-348.4. Every individual or family accident and sickness insurance policy, certificate, contract or plan issued for delivery in this State on and after July one, nineteen hundred sixty-six, must have printed thereon or attached thereto a notice stating substantially:

"YOUR POLICY MAY NOT APPLY WHEN YOU HAVE A CLAIM! PLEASE READ! Your policy was issued based on the information entered in your application, a copy of which is attached to the policy. If, to the best of your knowledge and belief, there is any misstatement in your application or if any information concerning the medical history of any insured person has been omitted, you should advise the Company immediately regarding the incorrect or omitted information; otherwise, your policy may not be a valid contract.

"RIGHT TO RETURN POLICY WITHIN 10 DAYS. If for any reason you are not satisfied with your policy, you may return it to the Company within ten days of the date you received it and the premium you paid will be promptly refunded."

If a policyholder or certificate holder or purchaser of a contract or plan returns same pursuant to such notice, coverage under such policy, certificate, contract or plan shall become void immediately upon the mailing or delivery of the contract, certificate, policy or plan to the insurance company at its home or branch office or plan to the insurance company at its home or branch office or to the agent through whom it was purchased. Coverage shall exist under such policy, certificate, contract or plan within said ten-day period until said return of the policy, with contract or plan.

A BILL to amend and reenact § 38.1-349, as amended, of the Code of Virginia, relating to required provisions in policies of accident and sickness insurance.

Be it enacted by the General Assembly of Virginia:

1. That § 38.1-349, as amended, of the Code of Virginia, be amended and reenacted as follows:

§ 38.1-349. Except as provided in § 38.1-351 of this article, each such policy delivered or issued for delivery to any person in this State shall contain the provisions specified in this section in the words in which the same appear in this section; provided, however, that the insurer may, at its option, substitute for one or more of such provisions corresponding provisions of different wording approved by the Commission which are in each instance not less favorable in any respect to the insured or the beneficiary. Such provisions shall be preceded individually by the caption "REQUIRED PROVISIONS" or, at the option of the insurer, by such appropriate individual or group captions or subcaptions as the Commission may approve.

(1) A provision as follows:

ENTIRE CONTRACT; CHANGES: This policy, including the endorsements and the attached papers, if any, constitutes the entire contract of insurance. No change in this policy shall be valid until approved by an executive officer of the insurer and unless such approval be endorsed hereon or attached hereto. No agent has authority to change this policy or to waive any of its provision.

(2) A provision as follows:

TIME LIMIT ON CERTAIN DEFENSES: (a) After * *one year* from the date of issue of this policy, no misstatements, except fraudulent misstatements, made by the applicant in the application for such policy shall be used to void the policy or to deny a claim for loss incurred or disability (as defined in the policy) commencing after the expiration of such * *one*-year period.

(The foregoing policy provision shall not be so construed as to affect any legal requirement for avoidance of a policy or denial of a claim during such initial * *one*-year period, nor to limit the application of paragraphs (1), (2), (3), (4) and (5) of § 38.1-350 in the event of misstatement with respect to age or occupation or other insurance.)

(A policy which the insured has the right to continue in force subject to its terms by the timely payment of premium (1) until at least age 50 or, (2) in the case of a policy issued after age 44, for at least five years from its date of issue, may contain in lieu of the foregoing the following provision (from which the clause in parentheses may be omitted at the insurer's option) under the caption "INCONTESTABLE":

After this policy has been in force for a period of * *one year* during the lifetime of the insured (excluding any period during which the insured is disabled), it shall become incontestable as to the statements contained in the application).

(b) No claim for loss incurred or disability (as defined in the policy) commencing after * *one year* from the date of issue of this policy shall be reduced or denied on the ground that a disease or physical condition not excluded from coverage by name or specific description effective on the date of loss had existed prior to the effective date of coverage of this policy.

(3) A provision as follows:

GRACE PERIOD: A grace period of . . . . . (insert a number not less than "7" for weekly premium policies, "10" for monthly premium policies and "31" for all other policies) days will be granted for the payment of each premium falling due after the first premium, during which grace period the policy shall continue in force.

(A policy which contains a cancellation provision may add, at the end of the above provision,

subject to the right of the insurer to cancel in accordance with the cancellation provision hereof.

A policy in which the insurer reserves the right to refuse any renewal shall have, at the beginning of the above provision,

Unless not less than five days prior to the premium due date the insurer has delivered to the insured or has mailed to his last address as shown by the records of the insurer written notice of its intention not to renew this policy beyond the period for which the premium has been accepted,).

REINSTATEMENT: If any renewal premium be not paid within the time granted the insured for payment, a subsequent acceptance of premium by the insurer or by any agent duly authorized by the insurer to accept such premium, without requiring in connection therewith an application for reinstatement, shall reinstate the policy; provided, however, that if the insurer or such agent requires an application for reinstatement and issues a conditional receipt for the premium tendered, the policy will be reinstated upon approval of such application by the insurer or, lacking such approval, upon the forty-fifth day following the date of such conditional receipt unless the insurer has previously notified the insured in writing of its disapproval of such application. The reinstated policy shall cover only loss resulting from such accidental injury as may be sustained after the date of reinstatement and loss due to such sickness as may begin more than ten days after such date. In all other respects the insured and insurer shall have the same rights thereunder as they had under the policy immediately before the due date of the defaulted premium, subject to any provisions endorsed hereon or attached hereto in connection with the reinstatement. Any premium accepted in connection with a reinstatement shall be applied to a period for which premium has not been previously paid, but not to any period more than sixty days prior to the date of reinstatement.

(The last sentence of the above provision may be omitted from any policy which the insured has the right to continue in force subject to its terms by the timely payment of premiums (1) until at least age 50, or, (2) in the case of a policy issued after age 44, for at least five years from its date of issue.)

(5) A provision as follows:

NOTICE OF CLAIM: Written notice of claim must be given to the insurer within twenty days after the occurrence or commencement of any loss covered by the policy, or as soon thereafter as is reasonably possible. Notice given by or on behalf of the insured or the beneficiary to the insurer at ..... (insert the location of such office as the insurer may designate for the purpose), or to any authorized agent of the insurer, with information sufficient to identify the insured, shall be deemed notice to the insurer.

(In a policy providing a loss-of-time benefit which may be payable for at least two years, an insurer may at its option insert the following between the first and second sentences of the above provision:

Subject to the qualifications set forth below, if the insured suffers loss of time on account of disability for which indemnity may be payable for at least two years, he shall, at least once in every six months after having given notice of claim, give to the insurer notice of continuance of said disability, except in the event of legal incapacity. The period of six months following any filing of proof by the insured or any payment by the insurer on account of such claim or any denial of liability in whole or in part by the insurer shall be excluded in applying this provision. Delay in the giving of such notice shall not impair the insured's right to any indemnity which would otherwise have accrued during the period of six months preceding the date on which such notice is actually given.)

(6) A provision as follows:

CLAIM FORMS: The insurer, upon receipt of a notice of claim, will furnish to the claimant such forms as are usually furnished by it for filing proofs of loss. If such forms are not furnished within fifteen days after the giving of such notice the claimant shall be deemed to have complied with the requirements of this policy as to proof of loss upon submitting, within the time fixed in the policy for filing proofs of loss, written proof covering the occurrence, the character and the extent of the loss for which claim is made.

(7) A provision as follows:

PROOFS OF LOSS: Written proof of loss must be furnished to the insurer at its said office in case of claim for loss for which this policy provides any periodic payment contingent upon continuing loss within ninety days after the termination of the period for which the insurer is liable and in case of claim for any other loss within ninety days after the date of such loss. Failure to furnish such proof within the time required shall not invalidate nor reduce any claim if it was not reasonably possible to give proof within such time, provided such proof is furnished as soon as reasonably possible and in no event, except in the absence of legal capacity, later than one year from the time proof is otherwise required.

(8) A provision as follows:

TIME OF PAYMENT OF CLAIMS: Indemnities payable under this policy for any loss other than loss for which this policy provides any periodic payment will be paid immediately upon receipt of due written proof of such loss. Subject to due written proof of loss, all accrued indemnities for loss for which this policy provides periodic payment will be paid .... (insert period for payment which must not be less frequently than monthly) and any balance remaining unpaid upon the termination of liability will be paid immediately upon receipt of due written proof.

(9) A provision as follows:

PAYMENT OF CLAIMS: Indemnity for loss of life will be payable in accordance with the beneficiary designation and the provisions respecting such payment which may be prescribed herein and effective at the time of payment. If no such designation or provision is then effective, such indemnity shall be payable to the estate of the insured. Any other accrued indemnities unpaid at the insured's death may, at the option of the insurer, be paid either to such bene-

ficiary or to such estate. All other indemnities will be payable to the insured.

(The following provisions, or either of them, may be included with the foregoing provision at the option of the insurer:

If any indemnity of this policy shall be payable to the estate of the insured, or to an insured or beneficiary who is a minor or otherwise not competent to give a valid release, the insurer may pay such indemnity, up to an amount not exceeding $. . . . . (insert an amount which shall not exceed $1,000), to any relative by blood or connection by marriage of the insured or beneficiary who is deemed by the insurer to be equitably entitled thereto. Any payment made by the insurer in good faith pursuant to this provision shall fully discharge the insurer to the extent of such payment.

Subject to any written direction of the insured in the application or otherwise all or a portion of any indemnities provided by this policy on account of hospital, nursing, medical, or surgical services may, at the insurer's option and unless the insured requests otherwise in writing not later than the time of filing proofs of such loss, be paid directly to the hospital or person rendering such services; but it is not required that the service be rendered by a particular hospital or person.)

(10) A provision as follows:

PHYSICAL EXAMINATIONS AND AUTOPSY: The insurer at its own expense shall have the right and opportunity to examine the person of the insured when and as often as it may reasonably require during the pendency of a claim hereunder and to make an autopsy in case of death where it is not forbidden by law.

(11) A provision as follows:

LEGAL ACTIONS: No action at law or in equity shall be brought to recover on this policy prior to the expiration of sixty days after written proof of loss has been furnished in accordance with the requirements of this policy. No such action shall be brought after the expiration of three years after the time written proof of loss is required to be furnished.

(12) A provision as follows:

CHANGE OF BENEFICIARY: Unless the insured makes an irrevocable designation of beneficiary, the right to change of beneficiary is reserved to the insured and the consent of the beneficiary or beneficiaries shall not be requisite to surrender or assignment of this policy or to any change of beneficiary or beneficiaries, or to any other changes in this policy.

(The first clause of this provision, relating to the irrevocable designation of beneficiary, may be omitted at the insurer's option.)

(13) A provision as follows:

REQUIRED COVERAGE ON CONNECTING OR RETURNING PLANES: In every airtrip accident policy, issued in this State through a mechanical vending machine or otherwise, the coverage thereof, according to its terms and provisions, shall extend to an accident on a connecting or returning plane on which the insured's initial airtrip ticket entitles him to ride, if it be shown that the insured would be entitled to recover under such policy had the accident occurred while insured was riding on the initial plane designated on such ticket.

A BILL to amend the Code of Virginia by adding a section numbered 38.1-361.1 prohibiting denial, for certain causes, of liability on claims under policies of accident and sickness insurance.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia be amended by adding a section numbered 38.1-361.1, as follows:

§ 38.1-361.1. No insurer having issued a policy of accident and sickness insurance pursuant to the provisions of this article shall deny liability on any claim under such policy because of the existence of a congenital physical defect at the time of the making of the application for such policy, unless it be shown that the applicant knew or might reasonably have been expected to know of such defect.

A BILL to amend and reenact § 38.1-350 of the Code of Virginia, relating to permitted provisions in policies of accident and sickness insurance.

Be it enacted by the General Assembly of Virginia:

1. That § 38.1-350 of the Code of Virginia be amended and reenacted as follows:

§ 38.1-350. Except as provided in § 38.1-351 of this article no such policy delivered or issued for delivery to any person in this State shall contain provisions respecting the matters set forth below unless such provisions are in the words in which the same appear in this section; provided, however, that the insurer may, at its option, use in lieu of any such provision a corresponding provision of different wording approved by the Commission which is not less favorable in any respect to the insured or the beneficiary. Any such provision contained in the policy shall be preceded individually by the appropriate caption OTHER PROVISIONS or, at the option of the insurer, by such appropriate individual or group captions or subcaptions as the Commission may approve.

(1) A provision as follows:

CHANGE OF OCCUPATION: If the insured be injured or contract sickness after having changed his occupation to one classified by the insurer as more hazardous than that stated in this policy or while doing for compensation anything pertaining to an occupation so classified, the insurer will pay only such portion of the indemnities provided in this policy as the premium paid would have purchased at the rates and within the limits fixed by the insurer for such more hazardous occupation. If the insured changes his occupation to one classified by the insurer as less hazardous than that stated in this policy, the insurer, upon receipt of proof of such change of occupation, will reduce the premium rate accordingly, and will return the excess pro rata unearned premium from the date of change of occupation or from the policy anniversary date immediately preceding receipt of such proof, whichever is the more recent. In applying this provision, the classification of occupational risk and the premium rates shall be such as have been last filed by the insurer prior to the occurrence of the loss for which the insurer is liable or prior to date of proof of change in occupation with the state official having supervision of insurance in the state where the insured resided at the time this policy was issued; but if such filing was not required, then the classification of occupational risk and the premium rates shall be those last made effective by the insurer in such state prior to the occurrence of the loss or prior to the date of proof of change in occupation.

(2) A provision as follows:

MISSTATEMENT OF AGE: If the age of the insured has been misstated, all amounts payable under this policy shall be such as the premium paid would have purchased at the correct age.

(3) A provision as follows:

* *OVERINSURANCE:* If an accident or sickness or accident and sickness policy or policies previously issued by the insurer to the insured be in force concurrently herewith, making the aggregate indemnity for . . . . . (insert type of coverage or coverages) in excess of $ . . . . . (insert maximum limit of indemnity or indemnities) the excess insurance shall be void and all premiums paid for such excess shall be returned to the insured or to his estate.

or, in lieu thereof:

Insurance effective at any one time on the insured under *this policy and* a like policy or policies in this insurer is limited to the one * policy elected by the insured, his beneficiary or his estate, as the case may be, and the insurer will return all premiums paid for all other such policies.

(4) A provision as follows:

* *OVERINSURANCE: If, with respect to a person covered under this policy, benefits for allowable expense incurred during a claim determination period under this policy together with benefits for allowable expense during such period under all other valid coverage (without giving effect to this provision or to any "overinsuance provision" applying to such other valid coverage), exceed the total of such person's allowable expenses during such period, this insurer shall be liable only for such proportionate amount of the benefits for allowable expenses under this policy during such period as*

(i) the total allowable expense during such period bears to

(ii) the total amount of benefits payable during such period for such expense under this policy and all other valid coverage (without giving effect to this provision or to any "overinsurance provision" applying to such other valid coverage)..

less in both (i) and (ii) any amount of benefits for allowable expense payable under other valid coverage which does not contain an "overinsurance provision." In no event shall this provision operate to increase the amount of benefits for allowable expense payable under this policy with respect to a person covered under this policy above the amount which would have been paid in the absence of this provision. This insurer may pay benefits to any insurer providing other valid coverage in the event of overpayment by such insurer. Any such payment shall discharge the liability of this insurer as fully as if the payment had been made directly to the insured, his assignee or his beneficiary. In the event that this insurer pays benefits to the insured, his assignee or his beneficiary, in excess of the amount which would have been payable if the existence of other valid coverage had been disclosed, this insurer shall have a right of action against the insured, his assignee or his beneficiary, to recover the amount which would not have been paid had there been a disclosure of the existence of other valid coverage. The amount of the other valid coverage which is on a provision of service basis shall be computed as the amount the services rendered would have cost in the absence of such coverage. For purposes of this provision:

(i) "allowable expense" means 110% of any necessary, reasonable and customary item of expense which is covered, in whole or in part, as a hospital, surgical, medical or major medical expense under this policy or under any other valid coverage;

(ii) "claim determination period" with respect to any covered person means the initial period of . . . . . (insert period of not less than thirty days) and each successive period of a like number of days, during which allowable expense covered under this policy is incurred on account of such person. The first such period begins on the date when the first such expense is incurred, and successive periods shall begin when such expense is incurred after expiration of a prior period;

or, in lieu thereof:

"claim determination period" with respect to any covered person means each ..... (insert calendar or policy period of not less than a month) during which allowable expense covered under this policy is incurred on account of such person;

(iii) "overinsurance provision" means this provision and any other provision which may reduce an insurer's liability because of the existence of benefits under other valid coverage.

(The foregoing provision may be inserted in all policies providing hospital, surgical, medical or major medical benefits. The insurer may make this provision applicable to either or both (a) other valid coverage with other insurers and (b), except for individual policies individually underwritten, other valid coverage with the same insurer. The insurer shall include in this provision a definition of "other valid coverage" approved as to form by the Commission. Such terms may include hospital, surgical, medical or major medical benefits provided by group, blanket or franchise coverage, individual and family-type coverage, Blue Cross-Blue Shield coverage and other prepayment plans, group practice and individual practice plans, uninsured benefits provided by labor-management trusteed plans, or union welfare plans, or by employer or employee benefit organizations, benefits provided under governmental programs, workmen's compensation insurance or any coverage required or provided by any other statute, and medical payments under automobile liability and personal liability policies. Other valid coverage shall not include payments made under third party liability coverage as a result of determination of negligence, but an insurer may at its option include a subrogation clause in its policy. The insurer may require, as part of the proof of claim, the information necessary to administer this provision.)

(5) A provision as follows:

INSURANCE WITH OTHER INSURERS: If there be other valid coverage, not with this insurer, providing benefits for the same loss on other than an expense incurred basis and of which this insurer has not been given written notice prior to the occurrence or commencement of loss, the only liability for such benefits under this policy shall be for such proportion of the indemnities otherwise provided hereunder for such loss as the like indemnities of which the insurer had notice (including the indemnities under this policy) bear to the total amount of all like indemnities for such loss, and for the return of such portion of the premium paid as shall exceed the pro rata portion for the indemnities thus determined.

(If the foregoing policy provision is included in a policy which also contains the next preceding policy provision there shall be added to the

caption of the foregoing provision the phrase "—OTHER BENEFITS." The insurer may, at its option, include in this provision a definition of "other valid coverage," approved as to form by the Commission, which definition shall be limited in subject matter to coverage provided by organizations subject to regulation by insurance law or by insurance authorities of this or any other state of the United States or any province of Canada, and to any other coverage the inclusion of which may be approved by the Commission. In the absence of such definition such term shall not include group insurance, or benefits provided by union welfare plans or by employer or employee benefit organizations. For the purpose of applying the foregoing policy provision with respect to any insured, any amount of benefit provided for such insured pursuant to any compulsory benefit statute (including any workmen's compensation or employer's liability statute) whether provided by a governmental agency or otherwise shall in all cases be deemed to be "other valid coverage" of which the insurer has had notice. In applying the foregoing policy provision no third party liability coverage shall be included as "other valid coverage.")

(6) A provision as follows:

RELATION OF EARNINGS TO INSURANCE: If the total monthly amount of loss of time benefits promised for the same loss under all valid loss of time coverage upon the insured, whether payable on a weekly or monthly basis, shall exceed the monthly earnings of the insured at the time disability commenced or his average monthly earnings for the period of two years immediately preceding a disability for which claim is made, whichever is the greater, the insurer will be liable only for such proportionate amount of such benefits under this policy as the amount of such monthly earnings or such average monthly earnings of the insured bears to the total amount of monthly benefits for the same loss under all such coverage upon the insured at the time such disability commences and for the return of such part of the premiums paid during such two years as shall exceed the pro rata amount of the premiums for the benefits actually paid hereunder; but this shall not operate to reduce the total monthly amount of benefits payable under all such coverage upon the insured below the sum of two hundred dollars or the sum of the monthly benefits specified in such coverages, whichever is the lesser, nor shall it operate to reduce benefits other than those payable for loss of time.

(The foregoing policy provision may be inserted only in a policy which the insured has the right to continue in force subject to its terms by the timely payment of premiums (1) until at least age 50 or, (2) in the case of a policy issued after age 44, for at least five years from its date of issue. The insurer may, at its option, include in this provision a definition of "valid loss of time coverage," approved as to form by the Commission, which definition shall be limited in subject matter to coverage provided by governmental agencies or by organizations subject to regulation by insurance law or by insurance authorities of this or any other state of the United States or any province of Canada, or to any other coverage the inclusion of which may be approved by the Commission or any combination of such coverages. In the absence of such definition such term shall not include any coverage provided for such insured pursuant to any compulsory benefit statute (including any workmen's compensation or employer's liability statute), or benefits provided by union welfare plans or by employer or employee benefit organizations.)

A BILL to amend the Code of Virginia by adding in Chapter 1 of Title 38.1 an article numbered 10 containing §§ 38.1-70.5 through 38.1-70.8, to create an Advisory Board on Accident and Sickness Insurance, to prescribe its powers and duties, and to provide for immunity for members of the Board from liability as a result of the performance of their duties.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia be amended by adding in Chapter 1 of Title 38.1 an article numbered 10 containing §§ 38.1-70.5 through 38.1-70.8, as follows:

ARTICLE 10

Advisory Board on Accident and Sickness Insurance

§ 38.1-70.5. (a) There is hereby created in the Bureau of Insurance of the State Corporation Commission a Board to be known as the Advisory Board on Accident and Sickness Insurance. The Board shall consist of nine members appointed by the Governor, subject to confirmation by the General Assembly, if in session when such appointments are made and if not in session, then at its next succeeding regular session. Four members of the Board shall be representatives of the insurance industry and five members shall be appointed from the public at large. In making the initial appointments, three members shall be appointed for terms of two years, three members for terms of three years and three members for terms of four years. Subsequent appointments shall be for terms of four years except appointments to fill vacancies, which shall be made for the unexpired terms.

(b) The Board shall elect from its membership a chairman and such other officers as it may deem necessary. It shall adopt such rules as may be necessary for the discharge of its duties, not inconsistent with law. It shall meet at such times and places as it may determine; provided that it shall meet at least quarterly during each calendar year.

(c) Members of the Board shall receive no compensation for their services, but shall be paid their necessary expenses incurred in the discharge of their duties, from funds appropriated for the maintenance of the Bureau of Insurance.

§ 38.1-70.6. (a) The Board shall at least quarterly during each calendar year review an analysis of complaints prepared by the Bureau of Insurance relating to the accident and sickness insurance industry. It may call upon any company selling accident and sickness insurance in the State of Virginia to appear before the Board when in the opinion of the Board such company is not operating in the public interest, to the end that the Board may examine its operations and procedures. If in the opinion of the Board any company is not operating in the public interest, it may recommend to the Commissioner of Insurance appropriate disciplinary action.

(b) The Board shall also make such study of the accident and sickness insurance industry as it deems neceesary to insure better service to the public, and may recommend to the industry such procedures and changes resulting from such studies as it deems appropriate.

(c) The Board shall biennially make a report to the State Corporation Commission concerning its activities and may include any findings and recommendations which it deems desirable to improve the service being rendered by the accident and sickness insurance industry to the public.

§ 38.1-70.7. Testimony given before the Board and records furnished it in connection with its investigations shall be confidential and shall not be disclosed to any person except members of the Board or members of the staff of the Bureau of Insurance, unless the same are required in any proceeding before the State Corporation Commission.

§ 38.1-70.8. Members of the Board shall be immune from civil suit or criminal prosecution as a result of any action, findings or recommendations made by the Board in performing their duties under this article.

HOUSE JOINT RESOLUTION NO.

Requesting the Insurance Industry to investigate the possibility of reducing the costs of accident and sickness insurance policies by the adoption of certain measures designed to reduce the costs of hospital and medical services.

Whereas, the cost of hospitalization has shown a steady increase for a number of years due both to the development of new and improved but more expensive techniques for the treatment of illness by the medical profession and to the effect of continuing inflation on other hospital costs; and

Whereas, it is alleged that some physicians elect to utilize hospital facilities, by admission of the patient, for certain diagnostic purposes which could be performed on an outpatient basis but which, on that basis, would be at the expense of the patient; and

Whereas, certain of the hospital and medical associations have begun to offer certain diagnostic and laboratory services on an outpatient basis and it would appear that this may result in lower overall costs; now, therefore, be it

Resolved by the House of Delegates of Virginia, the Senate concurring, That the segment of the insurance industry offering accident and sickness insurance coverage be requested to give careful consideration to the advantages of substitution, in proper cases, of coverage of specific diagnostic and treatment services on an outpatient basis for the furnishing of such services in connection with hospital admissions and the possible effect thereof in reducing the overall costs of such services and treatment; this to the end that the rising costs of hospitalization coverages may be minimized through a leveling off of or reduction in, the steadily rising costs of accident and sickness insurance.

A BILL to require notice to be given in advance of cancellation of certain policies of insurance, and prescribe information to be contained therein.

Be it enacted by the General Assembly of Virginia:

1. § 1. No policy of insurance covering the ownership or operation of a motor vehicle shall be cancelled by the insurer unless it has given the policyholder notice, by registered or certified mail to his last known post office address, with return receipt requested, at least ten days in advance of the date on which the coverage under the policy is to be terminated. Such notice shall contain a prominent statement in form approved by the Bureau of Insurance of the State Corporation Commission that the insurer is subject under the law to regulation by such Bureau and that the policyholder may seek a review of such cancellation by the Commissioner of Insurance by letter requesting such review.

A BILL to amend the Code of Virginia by adding in Chapter 1 of Title 38.1 an article numbered 11 containing sections numbered 38.1-70.9 through 38.1-70.12, prohibiting the termination of certain contracts of insurance by failure to renew the same without the giving of notice to the insured and the furnishing to him, if requested, of an explanation of the reason for such termination; and providing that such explanation, if given, shall be privileged.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia be amended by adding in Chapter 1 of Title 38.1 an article numbered 11 containing sections numbered 38.1-70.9 through 38.1-70.12, as follows:

ARTICLE 11

§ 38.1-70.9. No contract of insurance covering the operation of a motor vehicle which has been in effect for sixty days shall be terminated by the insurer by failure to renew unless the insurer gives the named insured notice in writing at least thirty days prior to the proposed date of termination;

(a) that it proposes to terminate or fail to renew the insurance contract upon such date; and

(b) that, upon receipt of a written request from the named insured, it will forthwith mail to the named insured a written explanation of its specific reason or reasons for terminating or failing to renew; and

(c) that the named insured, within ten days after receipt of such notice, may at his option, request the insurer to furnish such written explanation.

§ 38.1-70.10. If the named insured exercises his option to request an explanation the insurer shall forthwith, but in any event prior to the date of the proposed termination or failure to renew, mail to the named insured a written explanation, giving the reason or reasons for its failure to renew the contract.

§ 38.1-70.11. An explanation furnished in accordance with § 38.1-70.10 shall be privileged, and shall not constitute grounds for any cause of action against the insurer or its representatives or any firm, person or corporation who in good faith furnishes to the insurer the information upon which the reasons are based.

§ 38.1-70.12. The provisions of this article shall not apply to policies of liability insurance issued under any assigned risk plan established in conformity with § 38.1-264.

SENATE JOINT RESOLUTION NO.

Concerning regulation of advertising of certain types of insurance policies.

Whereas, certain advertisements of policies of insurance covering ownership and operation of motor vehicles, while not intentionally misleading, are incomplete in that they do not indicate all of the consequences incident to application for such insurance coverage; now, therefore, be it

Resolved by the Senate of Virginia, the House of Delegates concurring, That the State Corporation Commission is urged to give consideration to the adoption of regulations concerning this type of advertising, and the Commissioner of Insurance is requested to consider whether such advertisements may not constitute unfair methods of competition or unfair or deceptive acts or practices in the business of insurance within the prohibitions of § 38.1-52 of the Code of Virginia.

A BILL to amend the Code of Virginia by adding a section numbered 38.1-381.3, requiring applications for certain policies of motor vehicle liability insurance to have printed thereon a warning concerning the cancellability of such policies.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia be amended by adding a section numbered 38.1-381.3, as follows:

§ 38.1-381.3. Each application for the original issuance of a policy of insurance covering liability arising out of the ownership, maintenance or use of any motor vehicle shall have printed on the first page of the application form in red ink in boldface type the following legend: "THE POLICY OF INSURANCE FOR WHICH THIS APPLICATION IS BEING MADE, IF ISSUED, MAY BE CANCELLED AT THE OPTION OF THE INSURER AT ANY TME IN THE FIRST 60 DAYS DURING WHICH IT IS IN EFFECT."

This section shall not apply to the renewal of any such policy of insurance.

A BILL to amend the Code of Virginia by adding a section numbered 46.1-436.1 to prescribe the evidential value of extracts of convictions for violations of the motor vehicle laws in administrative hearings conducted by the Division of Motor Vehicles.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia be amended by adding a section numbered 46.1-436.1, as follows:

§ 46.1-436.1. In any administrative hearing conducted by the Commissioner or his designee pursuant to any provisions of this article an abstract showing a conviction of the violation of any of the provisions of this title, certified by the clerk of the court in which such conviction was had, shall be prima facie evidence that the person named in such abstract was duly convicted of such sentence, and the burden shall be on any person challenging the propriety of such conviction to show that such conviction was improper.

A BILL to amend the Code of Virginia by adding a section numbered 46.1-383.3 to require the Division of Motor Vehicles to re-examine certain persons under certain conditions.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia be amended by adding a section numbered 46.1-383.3 as follows:

§ 46.1-383.3. Upon receipt by the Division of Motor Vehicles of a request for the traffic record of a person, with a statement that such request is made in conjunction with the assignment of a risk pursuant to an agreement entered into as provided in § 38.1-264 of the Code, the Commissioner shall cause an examination to be made of the records of the Division relating to such person. If such investigation shows that such person has been convicted of (1) three or more offenses required to be reported under § 46.1-413 within one year, or (2) has been involved in two or more accidents reportable under § 46.1-400 within one year, or (3) has been involved in one or more such accidents and has had two or more such convictions within one year, or (4) has been involved in three or more such accidents within three years, or (5) has had five or more such convictions within three years, or (6) has been involved in one or more such accidents and has had three or more convictions within three years, the operator's or chauffeur's license, if any, of such person shall be immediately suspended. No license shall be issued or restored to such person unless the Commissioner is satisfied, after the examination provided for by § 46.1-369, that such person is competent to operate a motor vehicle. If, after such examination, the Division does not reissue the license, it shall so notify the person or organization requesting the record.

A BILL to amend and reenact § 46.1-383, as amended, of the code of Virginia, relating to examination of certain operators and chauffeurs and suspension, revocation or restriction of licenses.

Be it enacted by the General Assembly of Virginia:

1. That § 46.1-383, as amended, of the Code of Virginia, be amended and reenacted as follows:

§ 46.1-383. (a) The Division shall, upon receipt of a record that an operator or chauffeur has (1) been convicted of two traffic violations occurring during a period of one year in which the vehicle operated by him was in motion or (2) during a period of one year been involved as driver of a vehicle in two accidents involving personal injury or property damage in excess of fifty dollars, or having any other good cause to believe that an operator or chauffeur is incompetent or otherwise not qualified under this chapter to be licensed may, upon written notice of at least fifteen days to the person require him to submit to an examination to determine his fitness to operate a motor vehicle upon the highways of this State. Upon the conclusion of such examination, the Division shall take such action as may be appropriate and may suspend or revoke the license or privilege to operate a motor vehicle in this State of such person or permit him to retain such license or privilege to operate a motor vehicle in this State, or may issue a license subject to such restrictions as are authorized to be imposed by § 46.1-378. Refusal or neglect of the person to submit to such examination or comply with such restrictions shall be grounds for suspension or revocation of his license or privilege to operate a motor vehicle in this State.

(b) The Commissioner shall include, as a part of the application for an original operator's or chauffeur's license, or renewal thereof, questions as to the existence of specific physical or mental conditions which impair the ability of the applicant to operate a motor vehicle safely. Any person knowingly giving a false answer to any such question shall be guilty of perjury. If the answer to any such question indicates the existence of such condition, the Commissioner shall require an examination of the applicant by a licensed physician as a prerequisite to the issuance of the operator's or chauffeur's license.

A BILL to amend and reenact § 46.1-351.2 of the Code of Virginia, relating to forfeiture of vehicles seized upon arrest of persons driving after license suspended or revoked, and to amend the Code of Virginia by adding a section numbered 46.1-351.3, providing for impoundment of such vehicles under certain conditions.

Be it enacted by the General Assembly of Virginia:

1. That § 46.1-351.2 of the Code of Virginia be amended and reenacted, and that the Code of Virginia be amended by adding a section numbered 46.1-351.3, as follows:

§ 46.1-351.2. *(a)* The sheriff of the county or the sergeant of the city in which the * court *having jurisdiction to try the case against the person arrested* is located shall promptly inspect and appraise the property, under oath, at its fair cash value, and forthwith make return thereof in writing, to the clerk's office of * *such* court.

(b) If the value of the vehicle is so ascertained to be in excess of two hundred dollars, the attorney for the Commonwealth shall, within sixty days after receiving notice of seizure under § 46.1-351.1 file in the name of the Commonwealth, an information against the seized property, in the clerk's office of the circuit court of the county, or of the corporation court, hustings court, or other court of record having jurisdiction in the city, wherein the seizure was made. Should the attorney for the Commonwealth, for any reason, fail to file such information within such time, the same may, at any time within twelve months thereafter, be filed by the Attorney General, and the proceedings thereon shall be the same as if it had been filed by the attorney for the Commonwealth.

Such information shall allege the seizure, and set forth in general terms the grounds of forfeiture of the seized property, and shall pray that the same be condemned and sold and the proceeds disposed of according to law, and that all persons concerned or interested be cited to appear and show cause why such property should not be condemned and sold to enforce the forfeiture.

The owner of and all persons in any manner then indebted or liable for the purchase price of the property, and any person having a lien thereon, if they be known to the attorney who files the information, shall be made parties defendant thereto, and shall be served with the notice hereinafter provided for, in the manner provided by law for serving a notice, at least ten days before the day therein specified for the hearing on the information, if they be residents of this State; and if they be unknown or nonresidents, or cannot with reasonable diligence be found in this State, they shall be deemed sufficiently served by publication of the notice once a week for two successive weeks in some newspaper published in such county or city, or if none be published therein, then in some newspaper having general circulation therein, and a notice shall be sent by registered mail of such seizure to the last known address of the owner of such conveyance or vehicle.

(c) If the owner or lienor of the seized property shall desire to obtain possession thereof before the hearing on the information filed against the same, * *he* may give a bond payable to the Commonwealth, in a penalty of the amount equal to the appraised value of the conveyance or vehicle plus the court costs which may accrue, with security to be approved by the clerk, and conditioned for the performance of the final judgment of the court, on the trial of the information, and with a further condition to the effect that, if upon the hearing on information, the judgment of the court be that such property, or any part thereof, or such interest and equity as the owner or lienor may have therein, be forfeited,

judgment may thereupon be entered against the obligors on such bond for the penalty thereof, without further or other proceedings against them thereon, to be discharged by the payment of the appraised value of the property so seized and forfeited and costs, upon which judgment, execution may issue, on which the clerk shall endorse, "no security to be taken." Upon giving of the bond, the property shall be delivered to the owner or lienor.

(d) Any person claiming to be the owner of such seized property, or to hold a lien thereon, may appear at any time before final judgment of the trial court, and be made a party defendant to the information so filed, which appearance shall be by answer, under oath, in which shall be clearly set forth the nature of such defendant's claim, whether as owner or as lienor, and if as owner, the right or title by which he claims to be such owner, and if lienor, the amount and character of his lien, and the evidence thereof; and in either case, such defendant shall set forth fully any reason or cause which he may have to show against the forfeiture of the property.

(e) If such claimant shall deny that * *the operator of the vehicle* was, or should be, convicted as provided in §§ 46.1-350 or 46.1-351, and shall demand a trial by jury of the issue thus made, the court shall, under proper instructions, submit the same to a jury of five, to be selected and empaneled as prescribed by law, and if such jury shall find on the issue in favor of such claimant, or if the court, trying such issue without a jury, shall so find, the judgment of the court shall be to entirely relieve the property from forfeiture, and no costs shall be taxed against such claimant.

(f) If, on the other hand, the jury, or the court trying the issue without a jury, shall find against the claimant, or if it be admitted by the claimant that the conveyance or vehicle at the time of the seizure was being operated under conditions that the operator was, or should be, convicted as provided in §§ 46.1-350 or 46.1-351; nevertheless, if it shall appear to the satisfaction of the court that such claimant, if he claims to be the owner, was the actual bona fide owner of the conveyance or vehicle at the time of the seizure, that he was ignorant of such illegal use thereof, and that such illegal use was without his connivance or consent, express or implied, and that such innocent owner has perfected his title to the conveyance or vehicle, if it be a motor vehicle, if application for the title is made ten days prior to its seizure or within ten days from the time it was acquired, the court shall relieve the conveyance or vehicle from forfeiture and restore it to its innocent owner, and the costs of the proceedings shall be paid by the Commonwealth as now provided by law.

Where it is shown to the satisfaction of the court that the conveyance or vehicle for the forfeiture of which proceedings have been instituted was stolen from the person in possession, relief shall be granted the owner or lienor, either or both, an dthe costs of the proceedings shall be paid by the Commonwealth as now provided by law.

(g) If any such claimant be a lienor, and if it shall appear to the satisfaction of the court that the owner of the conveyance or vehicle has perfected his title to the conveyance or vehicle if it be a motor vehicle, prior to its seizure, or within ten days from the time it was acquired, and that such lienor was ignorant of the fact that such conveyance or vehicle was being used for illegal purposes, when it was so seized, that such illegal use was without such lienor's connivance or consent, express, or implied, and that he held a bona fide lien on such property and had perfected the same in the manner prescribed by law, prior to such seizure (if such conveyance or vehicle be an automobile the memorandum of

lien on the certificate of title issued by the Commissioner of the Division of Motor Vehicles on the automobile shall make any other recordation of the same unnecessary), the court shall, by an order entered of record establish the lien, upon satisfactory proof of the amount thereof; and if, in the same proceeding, it shall be determined that the owner of the seized property was himself in possession of the same, at the time it was seized, and that such illegal use was with his knowledge or consent, the forfeiture hereinbefore in this section declared, shall become final as to any and all interest and equity which such owner, or any other person so illegally using the same, may have in such seized property, which forfeiture shall be entered of record. In the last mentioned event, if the lien established is equal to or more than the value of the conveyance or vehicle, such conveyance or vehicle shall be delivered to the lienor, and the costs of the proceedings shall be paid by the Commonwealth as now provided by law; if the lien is less than the value of the conveyance or vehicle, the lienor may have the conveyance or vehicle delivered to him upon the payment of the difference. Should the lienor not demand delivery as aforesaid, an order shall be made for the sale of the property by the sheriff of the county, or sergeant of the city, as the case may be, in the manner prescribed by law, out of the proceeds of which the sale shall be paid, first, the lien, and second, the costs; and the residue, if any, shall be paid into the Literary Fund.

(h) If, however, no valid lien is established against the seized property, and upon the trial of the information, it shall be determined that the owner thereof was himself using the same, at the time of the seizure, or that such illegal use was with his knowledge or consent, the property shall be completely forfeited to the Commonwealth, and an order shall be made for the sale of such property by the sheriff of the county or sergeant of the city, as the case may be, in the manner prescribed by law. Out of the proceeds of such sale shall be paid the costs, and the residue shall be paid into the Literary Fund.

(i) In all cases, the actual expense incident to the custody of the seized property, and the expense incident to the sale thereof, including commissions, shall be taxed as costs.

§ 46.1-351.3 (a) If the value of the vehicle as shown by the appraisal required by § 46.1-351.2 is two hundred dollars or less, the attorney for the Commonwealth shall apply to the county court of the county or municipal court of the city having jurisdiction for an order to have the vehicle impounded. If the court finds that there is probable cause to believe that the person arrested was guilty of a violation of § 46.1-350 or § 46.1-351, it shall order such vehicle impounded for a period of sixty days at a cost of two dollars per day. After the expiration of such period of impoundment, the owner thereof or any person having a recorded lien thereon may secure the release of the vehicle upon payment of the charge for its impoundment. The person impounding such vehicle shall have a lien thereon in the amount of such charges, and in the event the owner or lienor fails or refuses to pay such charges, may sell the vehicle to satisfy such lien. Any proceeds of sale in excess of the amount of such charges shall be paid over to the owner of the vehicle or lienor, as their interests may appear.

(b) If the operator of the vehicle, or the owner or lienor, desires to contest the impoundment thereof on the grounds that (1) the operator of the vehicle denies that he was, or should be, convicted as provided in §§ 46.1-350 or 46.1-351, or (2) that the vehicle was being operated without the knowledge or consent of such owner or lienor, he may post bond as provided in § 46.1-351.1, and the provisions of that section shall thereafter apply, mutatis mutandis.

A BILL to amend and reenact § 46.1-167.1, as amended, of the Code of Virginia, relating to additional fees required for registration of uninsured motor vehicles.

Be it enacted by the General Assembly of Virginia:

1. That § 46.1-167.1, as amended, of the Code of Virginia be amended and reenacted as follows:

§ 46.1-167.1. In addition to any other fees prescribed by law, every person registering an uninsured motor vehicle, as hereinafter defined, shall pay at the time of registering the same a fee of * *fifty* dollars. Every person applying for registration for a motor vehicle and declaring the same to be an insured motor vehicle shall, under the penalties set forth in § 46.1-167.3, execute and furnish to the Commissioner his certificate that such motor vehicle is an insured motor vehicle as herein defined, or that the Commissioner has issued to the owner thereof, in accordance with the provisions of § 46.1-395, a certificate of self-insurance applicable to the vehicle sought to be registered. The Commissioner, or his duly authorized agent, may require any registered owner of a motor vehicle declared to be insured or any applicant for registration of a motor vehicle declared to be an insured motor vehicle to submit a certificate of insurance executed by an authorized agent or representative of an insurance company authorized to do business in this State. Such certificates of insurance shall be in a form prescribed by the Commissioner.