STUDY OF THE INSURANCE INDUSTRY

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
1970

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STUDY OF THE INSURANCE INDUSTRY

Report of

The Virginia Advisory Legislative Council

Richmond, Virginia
January 1972

To: HONORABLE LINWOOD HOLTON, *Governor of Virginia*

and

THE GENERAL ASSEMBLY OF VIRGINIA

I INTRODUCTION

This report is the result of a study recommended by David B. Ayres, Jr., Comptroller, and Walter W. Craigie, Jr., Treasurer of Virginia. In a memorandum prepared by Mr. Ayres and Mr. Craigie at the Governor's request, they cited a material restriction of the insurance market in Virginia and recommended that the Virginia Advisory Legislative Council undertake an intensive study of casualty and property insurance problems existing in Virginia.

As a result of the memorandum prepared for the Governor, he requested the council undertake a study of the Insurance Industry. The following Resolution was also approved during the 1971 Special Session of the General Assembly:

HOUSE JOINT RESOLUTION NO. 32

Directing the Virginia Advisory Legislative Council, during its insurance industry study, to study the feasibility of establishing a placement plan and joint underwriting program for all types of casualty insurance.

Whereas, there now exists a serious instability in the insurance market in the Commonwealth; and

Whereas, as a result of this instability, many citizens now find that insurance at reasonable rates is unavailable; and

Whereas, provision for the equitable distribution of risks should be made among authorized insurers so that insurance might be obtainable at reasonable rates through the normal insurance market; now, therefore, be it

Resolved by the House of Delegates, the Senate concurring, That the Virginia Advisory Legislative Council is directed, as an incident to the study of the insurance industry requested by the Governor, to study the feasibility of establishing a placement plan and joint underwriting program for all types of casualty insurance.

The above referenced request by the Governor was transmitted to the Council prior to the approval of this Resolution, and called for a broader study than is suggested by the Resolution.

The request by the Governor and passage of the Joint Resolution directing the Council to make a study of the Insurance Industry resulted in the creation of the Insurance Industry Study Committee. Senator Edward E. Willey of Richmond was selected to Chair the Committee and other members included: Delegate M. Caldwell Butler, Roanoke, Delegate Russell M. Carneal, Williamsburg, Grady M. Chesson, Lynchburg, Senator Henry E. Howell, Jr., Norfolk, Bernard Hulcher, Richmond, Charles H. Longfield, Richmond, T. Grayson Maddrea, Richmond, Senator Willard J. Moody, Portsmouth, Delegate Stanley A. Owens, Manassas, Ray M. Paul, Richmond, Delegate A. L. Philpott, Bassett, Sidney J. Rosenbaum, Martinsville, Paul G. Stickler, Richmond, J. Theron Timmons, Norfolk, Delegate Carrington Williams, Fairfax, and D. T. Zimmerman, Charlottesville. Ex officio members included Everette S. Francis, Commissioner of Insurance, Garland L. Hazelwood, Jr., Actuary—Fire and Casualty, Bureau of Insurance, A. Grey Staples, Jr., General Counsel, State Corporation Commission and Henry M. Massie, Assistant Attorney General. Also participating in the study were Walter W. Craigie, Jr., Treasurer of Virginia and David B. Ayres, Jr., State Comptroller.

The Virginia Advisory Legislative Council and the Division of Statutory Research and Drafting made staff and facilities available to carry out this study. L. Willis Robertson, Jr., was assigned as Secretary and Counsel for the Committee. Wildman S. Kincheloe, Jr., and Laurens Sartoris also acted as counsel to assist in carrying out the study.

At the first meeting of the Committee on April 7, 1971, a general plan of how the study should proceed was outlined as follows:

1. The members of the Committee should first acquaint themselves with general background information relating to insurance problems in Virginia.

2. Public hearings would be held to afford the public an opportunity to express their views regarding insurance problems in Virginia.

3. Other hearings would be held to allow insurance companies, agents and adjusters to air their views on insurance problems.

4. The full Committee would be divided into Subcommittees to better study the major problems brought to the attention of the Committee during the course of the hearings.

Pursuant to this plan the full Committee held six hearings. The first four hearings were held in four different areas of the State (Annandale, Richmond, Roanoke and Norfolk) and were devoted to the public's speaking on casualty and property insurance problems. The fifth hearing, held in Richmond on June 22, 1971, representatives of insurance companies were given an opportunity to present their views. On July 13, 1971, at the last hearing of the Committee, insurance agents and adjusters gave their views on insurance problems in Virginia.

At the August 17, 1971 meeting, after hearing testimony from representatives of the United States Department of Transportation and the Senate Commerce Committee on proposed federal no-fault legislation, the full Committee was divided into the following four Subcommittees:

1. The No-Fault Subcommittee,

2. The Open Competition Subcommittee,

3. The Highway Safety Subcommittee,

4. The Other Matters Subcommittee.

The Subcommittees met on numerous occasions and after making some initial policy decisions, spent much of their time working on the legislation to accompany their recommendations to the full Committee. After acting on the recommendations of the four Subcommittees, the Committee made its Report and recommendations to the Council.

After considering the Report of the Committee, the Council now makes its recommendations.

II RECOMMENDATIONS

1. THE GENERAL ASSEMBLY OF VIRGINIA SHOULD ENACT APPROPRIATE LEGISLATION PROVIDING FOR COMPENSATION OF AUTOMOBILE ACCIDENT VICTIMS ON A FIRST PARTY BASIS WITHOUT REGARD TO FAULT.

2. THE GENERAL ASSEMBLY OF VIRGINIA SHOULD ENACT LEGISLATION TO PROVIDE FOR SOME FORM OF COMPETITIVE RATE MAKING SYSTEM FOR INSURANCE RATES THUS CHANGING THE PRESENT PRIOR APPROVAL SYSTEM OF RATE MAKING TO A NO PRIOR APPROVAL SYSTEM OF THE FILE AND USE VARIETY.

3. THE GENERAL ASSEMBLY OF VIRGINIA SHOULD ENACT LEGISLATION TO PROVIDE GREATER HIGHWAY SAFETY IN VIRGINIA, AS FOLLOWS:

a) AMENDING § 18.1-57 TO REDUCE THE PRESENT 0.15 PERCENT OF BLOOD ALCOHOL BY WEIGHT TO 0.10 PERCENT AS THE PRESUMPTIVE LEVEL FOR DRIVING WHILE UNDER THE INFLUENCE OF ALCOHOL.

b) AMENDING § 18.1-56.1 TO REDUCE THE PRESENT 0.10 PERCENT OF BLOOD ALCOHOL BY WEIGHT TO 0.05 PERCENT AS THE PRESUMPTIVE LEVEL FOR DRIVING WHILE ABILITY TO DRIVE IS IMPAIRED BY ALCOHOL AND GIVING THE JUDGE OR JURY DISCRETION WITHIN A MINIMUM LIMIT OF TWO MONTHS AND A MAXIMUM LIMIT OF SIX MONTHS ON THE SUSPENSION PERIOD FOR FIRST OFFENDERS CONVICTED OF DRIVING WHILE ABILITY IMPAIRED BY ALCOHOL.

c) AMENDING § 18.1-55.1 TO PERMIT THE USE OF THE BREATH TEST, IN ADDITION TO THE BLOOD TEST, IN CASES OF DRIVERS ARRESTED AND CHARGED WITH OPERATING UNDER THE INFLUENCE OF ALCOHOL.

d) AMEND § 18.1-59 OF THE CODE OF VIRGINIA TO GIVE THE JUDGE OR JURY DISCRETION WITHIN STATED MINIMUM AND MAXIMUM LIMITS (NOT LESS THAN SIX MONTHS NOR MORE THAN TWELVE MONTHS) ON THE SUSPENSION PERIOD FOR FIRST OFFENDERS CONVICTED OF DRIVING WHILE UNDER THE INFLUENCE, RATHER THAN A MANDATORY SELF-EXECUTING REVOCATION OF THE RIGHT TO DRIVE FOR TWELVE MONTHS IN THE CASE OF FIRST OFFENDERS.

e) AMEND § 46.1-281 OF THE CODE OF VIRGINIA TO CONFORM TO § 11-1101 OF THE UNIFORM MOTOR VEHICLE CODE SO AS TO MAKE REMOVAL OF THE CAR KEYS ONE OF THE REQUIREMENTS FOR PROPER PARKING OF A MOTOR VEHICLE.

f) ADOPTION OF A RESOLUTION BY THE GENERAL ASSEMBLY URGING CONGRESS TO ENACT A NATIONAL BUMPER CONTROL LAW AS SOON AS FEASIBLE.

g) ADOPTION OF A RESOLUTION BY THE GENERAL ASSEMBLY REQUESTING THE DIVISION OF MOTOR VEHICLES TO STUDY THE FEASIBILITY OF IMPLEMENTING A "DRIVER IMPROVEMENT PROGRAM" TO BE USED AS A BASIS FOR TAKING AWAY A PERSON'S PRIVILEGE TO DRIVE IN VIRGINIA AND REPORT TO THE GENERAL ASSEMBLY IN DETAIL ON ENFORCEMENT EFFORTS PRESENTLY BEING USED TO CARRY OUT THE INTENT OF THE "HABITUAL OFFENDERS ACT".

4. THE GENERAL ASSEMBLY OF VIRGINIA SHOULD ENACT LEGISLATION OF THE FOLLOWING TYPES AND MAKE OTHER NECESSARY RECOMMENDATIONS TO ALLEVIATE CERTAIN OTHER PROBLEMS BROUGHT TO THE ATTENTION OF THE COMMITTEE DURING THE COURSE OF THE STUDY:

a) NEW LEGISLATION REQUIRING STRICTER LICENSING LAWS FOR INSURANCE AGENTS.

b) AMENDING § 38.1-381.5 TO CONFORM TO CERTAIN EXISTING PRACTICES.

c) MORE EFFICIENT ENFORCEMENT OF § 38.1-70.13 OF THE CODE OF VIRGINIA BY THE DIVISION OF MOTOR VEHICLES SO AS TO MINIMIZE THE NUMBER OF UNINSURED MOTORISTS USING VIRGINIA'S HIGHWAYS.

d) A STUDY BY THE INDUSTRIAL COMMISSION REGARDING THE POSSIBLE AMENDMENT OF § 65.1-117.1 OF THE CODE OF VIRGINIA WHICH PRESENTLY REQUIRES ALL INSURERS WRITING WORKMEN'S COMPENSATION INSURANCE IN VIRGINIA TO MAINTAIN AN OFFICE WITHIN THE STATE.

e) ADDING TWO SECTIONS NUMBERED 38.1-371.1 AND 38.1-371.2 TO ARTICLE 3, CHAPTER 8 OF TITLE 38.1 TO PROVIDE THAT NOTICES OF NON RENEWAL OR CANCELLATION OF FIRE INSURANCE OR FIRE INSURANCE COMBINED WITH OTHER COVERAGES (HOMEOWNER'S POLICY) SHALL INCLUDE THE SPECIFIC REASON OR REASONS FOR SUCH NON RENEWAL OR CANCELLATION AND INFORM THE INSURED OF HIS RIGHT OF REVIEW BY THE COMMISSIONER OF INSURANCE.

f) A RECOMMENDATION THAT THE FAIR PLAN NOT BE EXPANDED TO INCLUDE CRIME INSURANCE AT THE PRESENT TIME.

g) A RECOMMENDATION THAT IF MASS MERCHANDISING OF INSURANCE BECOMES A REALITY IN VIRGINIA, THEN THE RULES AND REGULATIONS GOVERNING SUCH MERCHANDISING SHOULD BE PROMULGATED BY THE STATE CORPORATION COMMISSION.

III REASONS FOR RECOMMENDATIONS

1. THE GENERAL ASSEMBLY OF VIRGINIA SHOULD ENACT APPROPRIATE LEGISLATION PROVIDING FOR COMPENSATION OF AUTOMOBILE ACCIDENT VICTIMS ON A FIRST PARTY BASIS WITHOUT REGARD TO FAULT.

The basic concept of no-fault insurance involves the removal of the fault placing tort system from the field of reparation of automobile accident victims. Under such a system the damages sustained by a party involved in an automobile accident would be paid by his own insurer on a first party basis without placing the fault for the accident on anyone. Many drivers now carry some no-fault coverage on their basic liability policies, the most common of

these being the medical payments coverages and collision coverages. However, the majority of the existing so-called no-fault plans are in reality only limited no-fault plans in that the plans provide for the injured party to have access to the tort fault placing system for recovery of all damages when the damages sustained are above a certain dollar amount. This apparent though logical inconsistency has led to confusion in the minds of many and in effect makes no-fault a misnomer.

After examination of the material before it the members of the Council concluded that there is dissatisfaction with the present automobile reparations system on the part of most segments of our society including policyholders, agents, the insurance industry and regulatory officials. The various groups are concerned for various reasons depending on their position within the system. Policyholders and claimants are concerned with delay in the settlement of claims, inequitable settlements, substantial rate increases, and in some cases the unavailability of coverage. The insurance industry is concerned largely with economic pressures of inflation affecting operating and claims costs as well as periods of inadequate rates, all of which restrict the ability of the industry to adequately serve the market and make a reasonable corporate profit. Insurance agents are caught in the hub of this wheel.

The present automobile reparations system has been characterized as not really a system but instead a conglomerate of statutes with an overlay of insurance coverage to protect the negligent party from financial disaster without adequate concern for proper compensation to the injured person. Studies indicate that certain types of claims are overpaid while other types are not paid due to complications of the present system and on still others, too little is paid and too late.

The insurance industry, regulatory officials, courts and the legal profession have all been severely criticized under the present system; and all must bear their fair share of the responsibility.

While the automobile physical and property damage coverages involve the largest number of insurance premiums and the largest volume of loss dollars, as compared with bodily injury-medical coverages, there appears to be less dissatisfaction in this area than in the bodily injury-medical field. Most collision claims are settled promptly and a majority of tort property damage is handled between companies through the voluntary arbitration system. Most of the delay and dissatisfaction in the property damage area is in cases where the innocent victim has no collision coverage, where there is questionable liability, or a combination of questionable liability and complications with a bodily injury claim.

It was our consensus that there is need for reform in the automobile physical and property damage field in the interest of controlling both claims cost and operating expenses. There is limited factual data to draw from regarding reform in this coverage. No such reform plans have been implemented in any state, although Massachusetts has recently amended its law in this respect. Only the Florida law, passed but not yet in effect, approaches these auto property and physical damage coverages on a no-fault basis. There are many broad aspects of this problem such as auto design, repairability, type of coverage, et cetera, which must be carefully studied before an objective proposal for reform can be developed. It is therefore our recommendation that a longer range study be scheduled to deal with the problem of automobile physical and property damage coverages.

We have concluded that since the primary dissatisfaction with the present system rests in the bodily injury and medical expense coverages, and there is more factual data on which to base judgments, we should concentrate our

efforts on development of a recommendation that will best serve the public in the Commonwealth of Virginia. Consideration was given to each of the so-called "No-Fault" plans that have been enacted in various states and the different plans that have been proposed by research groups, the insurance industry and segments of the Bar. A chart showing a comparison of our recommendation and such plans is appended to this report.

All other proposed plans were considered and rejected since they did not appear to stand the test of correcting the inadequacies most severely criticized in the present system. Examples: The Delaware Plan which is comparable to the plan proposed by some Virginia Bar groups makes no change in the present basic system but overlays compulsory medical payment and loss of income coverages on the present system. This does not deal with the basic issues and will beyond doubt result in substantially increased cost. It is our goal to enact a plan that would return a greater percentage of the premium dollar to the insured in loss benefits than does the present system.

The proposal represents our combined judgment of the best features of all of the plans reviewed when related to our understanding of the weaknesses of the present system and our best interpretation of the needs of the motoring public in Virginia. We wholeheartedly recommend it as a positive and substantial reform of our present system.

We make no claim for reduction in rates from the present level. Based on actuarial evaluations that have been made we are convinced that the improved coverage can be provided at the present rates for bodily injury and Uninsured Motorist coverages. This evaluation takes into consideration the loss dollars now being expended and the possible expense savings. It will result in a substantial redistribution of these dollars more equitably to more people by shifting part of the payments now made for pain and suffering to payment of medical expenses, lost wages and services, and survivors benefits. While we do not forecast immediate rate reductions, we feel that under this proposal rates will be stabilized. Under the proposed plan persons in the assigned risk program who cannot get medical payments coverage will be given it at no extra cost under the basic policy provision.

There is talk of pending federal preemption of the automobile insurance field and the Department of Transportation, after an exhaustive study, has recommended by resolution that the individual states act before the field is preempted by federal legislation. The Resolution reads in part as follows:

"Now therefore be it resolved:

That it is the sense of the Congress that the regulation of insurance should, in general, continue with the States, subject to the admonition, however, that Congress cannot, and will not, long ignore the need for evolving new and updated approaches to insurance and accident compensation.

That it is the further sense of the Congress that there must evolve at the State level a rational, equitable and compatible reparation system for motor vehicle accident victims supported and sustained by a similarly rational, equitable and compatible private insurance system, such combined system to be built upon the following principles:

1. Basic benefits should be forthcoming to the injured person on a first-party, contractual basis to the end that such person would be receiving benefits from the insurer with whom he has contracted and to whom he has paid his premiums and to the further end that competition among insurers would take the form of competition to provide prompter and more effective compensation for the premium payer.

2. Basic benefits under the reparations system should be payable to all accident victims without regard to fault, excluding, of course, those who willfully injure themselves.

3. Such benefits should provide compensation for all economic loss, subject to reasonable deductibles and limits, and the tort lawsuit should be eliminated, at least *pro tanto*, avoiding the adversary process for the mass of accidents.

4. The function of the reparations system should be to afford adequate, but not excessive, compensation to the accident victim at minimum cost. Therefore, the benefits obtainable by the accident victim from other benefit sources should be coordinated and meshed with those obtainable from the automobile accident reparations system with a view toward internalizing automobile accident loss costs by making automobile insurance the primary benefit source whenever feasible.

5. Maximum choice should be afforded the motorist in selecting his insurance source provided the coverage complies with the principles for the required minimum mandatory coverage.

6. Rehabilitation, avocational as well as vocational, should be a primary function and objective of the compensation system".

The bill contained in the Appendix of this report substantially meets the basic guidelines laid down in the above Resolution and if enacted will receive favorable public acceptance and serve the public of Virginia well.

2. THE GENERAL ASSEMBLY OF VIRGINIA SHOULD ENACT LEGISLATION TO PROVIDE FOR SOME FORM OF COMPETITIVE RATE MAKING SYSTEM FOR INSURANCE RATES THUS CHANGING THE PRESENT PRIOR APPROVAL SYSTEM OF RATE MAKING TO A NO PRIOR APPROVAL SYSTEM OF THE FILE AND USE VARIETY.

The phrase "Open Competition" is truly a misnomer. "Open Competition" connotes that rates will be governed by the selection by the public of the insurer who offers the best product to the public for the best price under our system of capitalism. However, such is not the case. Mr. Bently, former Commissioner of Insurance for the State of Georgia, has stated that the phrase was conceived as a vehicle to move the present Georgia insurance rate making law successfully through the legislature.

Basically there are only two types of rate making procedures. The two basic types are the prior approval system and the no prior approval system. Really there are three types of so-called "Open Competition" or no prior approval rate making systems:

1. The "file and use" type.

2. The "use and file" type.

3. The "use and no filing" type.

All of the so-called "Open Competition" or no prior approval systems make provision for the regulatory control of rates after they are in effect if the rates are found to be "excessive, inadequate or unfairly discriminatory".

Virginia presently uses a prior approval system of rate making which provides that no rates shall become effective or be applied or used in this State until filed with and approved by the State Corporation Commission.

Both the prior approval and no prior approval systems provide that rates shall not be excessive, inadequate or unfairly discriminatory. However, the method of insuring that rates meet the above standard is different under the

two basic types of rate making procedure. The prior approval system provides for the regulation of rates by the State Corporation Commission prior to their use to insure that rates are not excessive, inadequate or unfairly discriminatory. The no prior approval system provides that the most effective way to produce rates which are not excessive, inadequate or unfairly discriminatory is through independent action and reasonable price competition among insurers. The no prior approval system calls for formal regulatory controls by the State only if independent action and price competition fail to provide rates which conform to the standards. Therefore, under a no prior approval system a rate must be found to be excessive, inadequate or unfairly discriminatory before the State can exercise formal regulatory controls on an insurer. Some no prior approval bills provide for regulatory control under other circumstances also.

The restriction in the market for insurance in Virginia can be cured only by the enactment of a so-called "Open Competition" form of rate making procedure.

After deciding that a change to a no prior approval system of rate making is necessary to improve existing market conditions in Virginia, we reviewed the types of no prior approval systems available. We concluded that a no prior approval system of the file and use variety would receive more favorable public acceptance than the use and file type since a disgruntled insured would be able to see his rates at the time of making a complaint. The file and use system allows an insurer to file his rates and supporting data with the State Corporation Commission and, after filing, to put his rates into effect without waiting for approval by the State Corporation Commission. A use and file system would allow an insurer to use the rate he sets before he files his rates and supporting data with the State Corporation Commission.

We recommend a bill that follows existing Virginia law as closely as possible considering the basic differences in theory and methodology involved in the prior approval and no prior approval approaches to rate making. The proposal, by following existing law as closely as possible, will allow the implementation of this system with the fewest number of changes necessary to the existing structure of State regulatory organizations.

The enactment of this proposal will allow insurers to change their rates faster than under the present prior approval system to keep pace with constantly fluctuating market conditions encountered in the insurance field.

It is our belief that the enactment of this proposal will result in a loosening of the restricted market for insurance in Virginia without sacrificing any of the protection afforded the public under the present system. The proposal contains adequate safeguards to protect the public from insurers attempting to make rates which do not conform to the standards set out in the proposal. The recommended bill allows the State Corporation Commission to impose special restrictions on insurers in certain cases where their practices involve a danger to the public or competition is not an effective regulator of rates. A copy of the proposal may be found in Appendix II of this report.

3. THE GENERAL ASSEMBLY OF VIRGINIA SHOULD ENACT LEGISLATION OF THE FOLLOWING TYPE TO PROVIDE BETTER HIGHWAY SAFETY IN VIRGINIA:

a) AMENDING § 18.1-57 TO REDUCE THE PRESENT 0.15 PERCENT OF BLOOD ALCOHOL BY WEIGHT TO .10 PERCENT AS THE PRESUMPTIVE LEVEL FOR DRIVING WHILE UNDER THE INFLUENCE OF ALCOHOL.

Stricter laws for drunk drivers are in order because of the high frequency

of involvement by drinking drivers in fatal accidents. After looking to the laws of other states the reduction of blood alcohol by weight from 0.15 to 0.10 seems to be reasonable and feasible. The members also noted that similar legislation is being endorsed by the Virginia Highway Research Council and the Highway Safety Division. Such an amendment would conform the Virginia laws to the national standard. A copy of the proposal is contained in the Appendix.

b) AMENDING § 18.1-56.1 TO REDUCE THE PRESENT 0.10 PERCENT OF BLOOD ALCOHOL BY WEIGHT TO 0.05 PERCENT AS THE PRESUMPTIVE LEVEL FOR DRIVING WHILE ABILITY TO DRIVE IS IMPAIRED BY ALCOHOL AND GIVING THE JUDGE OR JURY DISCRETION WITHIN A MINIMUM LIMIT OF TWO MONTHS AND A MAXIMUM LIMIT OF SIX MONTHS ON THE SUSPENSION PERIOD FOR FIRST OFFENDERS CONVICTED OF DRIVING WHILE ABILITY IMPAIRED BY ALCOHOL.

The Council amended this section to conform to the amendments made in sections 18.1-57 and 18.1-59.

c) AMENDING § 18.1-55.1 TO PERMIT THE USE OF THE BREATH TEST, IN ADDITION TO THE BLOOD TEST, IN CASES OF DRIVERS ARRESTED AND CHARGED WITH OPERATING UNDER THE INFLUENCE OF ALCOHOL.

The addition of the breath test would improve the efforts of authorities to keep the drinking driver off the highways of Virginia. Virginia is now one of only two States which do not permit the use of the breath test at the present time. A copy of the proposal is contained in the Appendix.

d) AMEND § 18.1-59 OF THE PRESENT CODE OF VIRGINIA TO GIVE THE JUDGE OR JURY DISCRETION WITHIN STATED MINIMUM AND MAXIMUM LIMITS (NOT LESS THAN SIX MONTHS NOR MORE THAN TWELVE MONTHS) ON THE SUSPENSION PERIOD FOR FIRST OFFENDERS CONVICTED OF DRIVING WHILE UNDER THE INFLUENCE, RATHER THAN A MANDATORY SELF-EXECUTING REVOCATION OF THE RIGHT TO DRIVE FOR TWELVE MONTHS IN THE CASE OF FIRST OFFENDERS.

We are concerned with the low number of convictions under the present drunk driving law. Making the revocation discretionary rather than mandatorily self-executing will result in a more equitable consideration of the circumstances peculiar to a particular offender. This amendment would result in an increased number of convictions because instead of not convicting a person who needs an operator's license for his livelihood because of the mandatory self-executing revocation under § 18.1-59, the judge could use his discretion within certain limits and would tend to convict more. A copy of the proposed amendment is contained in Appendix III of this report.

e) AMEND § 46.1-281 OF THE PRESENT CODE OF VIRGINIA TO CONFORM TO § 11-1101 OF THE UNIFORM MOTOR VEHICLE CODE SO AS TO MAKE REMOVAL OF THE CAR KEYS ONE OF THE REQUIREMENTS FOR PROPER PARKING.

A large percentage of stolen automobiles are involved in accidents and leaving keys in the ignition is a great temptation to many members of the younger generation. Legislation to discourage this careless practice of leaving keys in ignitions appears appropriate. A copy of the proposal is contained in the Appendix of this report.

e) ADOPTION OF A RESOLUTION BY THE GENERAL ASSEMBLY URGING CONGRESS TO ENACT A NATIONAL BUMPER CONTROL LAW AS SOON AS FEASIBLE.

The high cost of repairing automobiles involved in low speed crashes is a major reason for the increasing costs of insurance. National standards for bumpers should be established to help curb the high cost of these accidents. It was noted that federal legislation in this field is pending in Congress at the present time. The standards set should be on a national basis and therefore the states should allow Congress to act before passing any inconsistent laws.

f) ADOPTION OF A RESOLUTION BY THE GENERAL ASSEMBLY REQUESTING THE DIVISION OF MOTOR VEHICLES TO STUDY THE FEASIBILITY OF IMPLEMENTING A "DRIVER IMPROVEMENT PROGRAM" TO BE USED AS A BASIS FOR TAKING AWAY A PERSON'S PRIVILEGE TO DRIVE IN VIRGINIA AND REPORT TO THE GENERAL ASSEMBLY IN DETAIL ON ENFORCEMENT EFFORTS PRESENTLY BEING USED TO CARRY OUT THE INTENT OF THE "HABITUAL OFFENDERS ACT."

We at first believed that a "point system" would operate more equitably than the present law as a basis for taking away a person's privilege to drive in Virginia. Under a "point system" each driving offense is assigned a certain number of points and when an individual driver's total of such points reaches a certain predetermined number he is first given warnings and then his privilege to drive is suspended when his total points surpass a certain number. Presently in Virginia, the conviction of certain offenses for the first time will result in the loss of the privilege to drive. After further study and on the advice of Vern Hill, Commissioner of Motor Vehicles, we hold that the implementation of a "Driver Improvement Program" will be the best solution. Under a "Driver Improvement Program" drivers, whose violations are not serious enough to require mandatory revocation but are serious enough to indicate that some type of corrective action is necessary, could be properly identified. Initially, such problem drivers would be sent warning letters advising them that repeated violations on their part will result in more drastic action. The records of these drivers will be checked from time to time and if additional violations occur, then the Division of Motor Vehicles will schedule an interview for the driver with a Driver Improvement Analyst. The Analyst will discuss the driver's record and point out the dangers of continued violations. After the interview, if additional violations occur, the driver's privilege to drive will be revoked. The "point system" only identifies citizens with numerous violations and does not provide a method for rehabilitation of problem drivers. We therefore, recommend a "Driver Improvement Program."

4. THE GENERAL ASSEMBLY OF VIRGINIA SHOULD ENACT LEGISLATION OF THE FOLLOWING TYPES AND MAKE OTHER NECESSARY RECOMMENDATIONS TO ALLEVIATE THE OTHER PROBLEMS BROUGHT TO THE ATTENTION OF THE COMMITTEE DURING THE COURSE OF THE STUDY:

a) THE PASSAGE OF NEW LEGISLATION REQUIRING STRICTER LICENSING LAWS FOR INSURANCE AGENTS.

The apparent ignorance of certain insurance agents in regard to the extent of coverages they are proposing to sell and the increase in law suits againt agents resulting from this fact is a matter of concern. Innocent misrepresentations by agents as to the extent of certain coverages can best be cured by requiring stricter educational requirements as a prerequisite for qualification to take the licensing exam for insurance agents. There is disagreement as to exactly what new requirements should be enacted.

b) AMENDING § 38.1-381.5 TO CONFORM TO CERTAIN EXISTING PRACTICES.

The first amendment is found in Subsection (a) (1) where private

"capacity" motor vehicles is changed to private "passenger" to conform with the terminology used in the policy. Subsection (a) (2) has been amended to provide that an offer to renew a policy written at standard rates with a policy written by the same insurer at "non-standard" rates does not amount to a "renewal" under Virginia statute. Therefore the reference to "same rating program" was added. In subsection (a) (3) the definition of cancellation is added since the existing section distinguishes between a "cancellation" and a "failure to renew." Subsection (d) has been amended to list the only two reasons for which cancellation may be effected (1) revocation or suspension of driver's license and (2) nonpayment of premium. These are the only two reasons for cancellation permitted under the current "termination endorsement" which has been in effect for several years. The enactment of § 38.1-381.5 created an inconsistency between policy provisions and the statute by listing seven reasons for cancellation. Subsection (d) (1) has been amended to permit a cancellation after the renewal date where an insured's license is suspended or revoked after the insurer had underwritten the renewal but before the expiration date so that the insurer would not know of the loss of license. Subsection (e) has been amended to provide that an insurer must provide the reason or reasons for cancellation with the notice of non-renewal or cancellation rather than giving the insurer the option of supplying it initially or only on the insured's request. Subsection (f) (1) has been amended to permit an offer of renewal to be made through the insurer's agent rather than only by the insurer and that the offer be in writing. Subsection (f) (2) has been amended to make it clear that where the insurer has manifested a willingness to renew the policy and the insured fails to respond, that the policy contract may terminate in accordance with its terms. Subsection (g) has been amended to allow an insured's attorney to request a review by the Commissioner rather than just the insured. The amendment also sets forth the purpose of the review by the Commissioner and the procedure upon a finding of improper termination. Subsection (h) has been amended to provide immunity for the Commissioner and his employees, and to provide that an insurer shall not be required to furnish a notice of cancellation or refusal to renew to anyone other than the named insured and the Commissioner of Insurance. A copy of the amendments in bill form can be found in Appendix IV.

c) MORE EFFICIENT ENFORCEMENT OF § 38.1-70.13 OF THE CODE OF VIRGINIA BY THE DIVISION OF MOTOR VEHICLES SO AS TO MINIMIZE THE NUMBER OF UNINSURED MOTORISTS USING VIRGINIA'S HIGHWAYS.

The Division of Motor Vehicles indicates that the notice of cancellation reports required by § 38.1-70.13 to be filed with the Commissioner by the insurer within fifteen days were collecting to excess at the Division; however, quick action could not be taken to require these persons named therein to turn in their license plates or pay the uninsured motorist fee. We recommend that the Commissioner of Motor Vehicles take the necessary action to speed up the process of requiring persons whose insurance has been cancelled to either cease driving or pay the uninsured motorists fee. This is an administrative problem not calling for further legislation.

d) A STUDY BY THE INDUSTRIAL COMMISSION REGARDING THE POSSIBLE AMENDMENT OF § 65.1-117 OF THE CODE OF VIRGINIA WHICH PRESENTLY REQUIRES ALL INSURERS WRITING WORKMEN'S COMPENSATION INSURANCE IN VIRGINIA TO MAINTAIN AN OFFICE WITHIN THE STATE.

In many cases it is unnecessary for an insurance company to have to maintain an office in this State when the company has a claims office close enough to Virginia to allow quick settlement of all claims. A change in the existing law requiring an insurer to have a Virginia office might be advisable in

this respect; such a change would do no harm to the consuming public served by such insurance companies.

e) ADDING TWO SECTIONS NUMBERED 38.1-371.1 AND 38.1-371.2 TO ARTICLE 3, CHAPTER 8 OF TITLE 38.1 TO PROVIDE THAT NOTICES OF NON-RENEWAL OR CANCELLATION OF FIRE INSURANCE OR FIRE INSURANCE COMBINED WITH OTHER COVERAGES (HOMEOWNER'S POLICY) SHALL INCLUDE THE SPECIFIC REASON OR REASONS FOR SUCH NON-RENEWAL OR CANCELLATION AND INFORM THE INSURED OF HIS RIGHT TO REVIEW BY THE COMMISSIONER OF INSURANCE.

We have heard that there is a substantial restriction in the market for both fire insurance and fire insurance combined with other coverages (homeowner's policy) in certain areas of the State. It was noted that several insurance companies operating in Virginia would not write a fire or homeowners policy on a home unless it had a certain predetermined market value. Also the Committee heard testimony that fire and homeowner's policies were not being offered by some insurance companies in areas where predominantly white neighborhoods were becoming integrated. Some companies in Virginia have stopped writing three year fire and homeowner's policies and will now only write a one year policy. The legislation we recommend requires the insurer to give written notice via registered or certified mail to the insured of his cancellation or refusal to renew a fire or homeowner's policy not less than thirty days prior to the expiration date of the policy. The new sections also provide that an insurer may cancel a fire or homeowner's policy only upon written notice to the insured for nonpayment of premium and that an insurer can refuse to renew a policy only if he gives notice thirty days prior to the expiration date of the policy and states the specific reason or reasons for such refusal to renew. The new sections also give an insured or his attorney within ten days of receipt of the notice of termination the right to request a review of the insurer's action by the Commissioner of Insurance. If the Commissioner finds that the cancellation or refusal to renew does not comply with the sections, then the cancellation or refusal to renew is not effective. This legislation will help ease the restrictions in the fire and homeowner's insurance market. These sections also give the insured with a homeowner's or fire insurance policy substantially the same rights as given an insured with a motor vehicle insurance policy under the proposed amendments to § 38.1-381.5.

f) A RECOMMENDATION THAT THE FAIR PLAN NOT BE EXPANDED TO INCLUDE CRIME INSURANCE AT THE PRESENT TIME.

Presently the Fair Plan or fair access to insurance requirements plan operates under the Virginia Insurance Placement Facility provided for in Chapter 19 of Title 38.1 and does not include crime insurance coverage which consists of burglary, robbery and theft coverages. There is not sufficient evidence at the present time of such a severe restriction in the crime insurance market to warrant the expansion of the Fair Plan to include crime insurance. In lieu of any expansion of the Fair Plan that Virginia should look to the Federal Crime Insurance Plan when and if the State qualifies for this plan. Under this plan the Commissioner of Insurance must certify that there is a need for the federal plan to become operative in Virginia and then if the federal authorities find that there is such a need, they assign an insurer to offer this coverage under their plan. However, the requirements of the plan are strict and require the insured to install certain locks, alarm systems and other protective devices. If an insured would voluntarily install these devices then he would have no trouble finding an insurer willing to offer crime insurance in the existing market.

g) A RECOMMENDATION THAT IF MASS MERCHANDISING OF INSURANCE BECOMES A REALITY IN VIRGINIA, THEN THE RULES AND REGULATIONS GOVERNING SUCH MERCHANDISING SHOULD BE PROMULGATED BY THE STATE CORPORATION COMMISSION.

Mass merchandising of insurance involves the sale of insurance to a group of persons rather than individual sales to an individual by a number of agents. There are both advantages and disadvantages involved in the mass merchandising of insurance. One advantage is lower cost to the consumer. The disadvantages include the reduction of jobs for many insurance agents, and such a mass merchandising program may tend to lure the best risks away from other insurers and set up very strict underwriting policies because of the low-cost coverage they are offering. Under present law there is no statutory authority for or against the mass merchandising of insurance in Virginia. It was noted that there is some form of mass merchandising being used in Virginia at the present time but that each risk under this plan is rated individually. Inequities could exist under a system of mass merchandising and thus we recommend that rules and regulations be promulgated by the State Corporation Commission if mass merchandising becomes a problem in Virginia.

CONCLUSION

We wish to thank the members of the Committee for the time and effort given by them in carefully and thoroughly studying this crucial problem. We also express our appreciation to the many individuals, officials and organizations who afforded the Committee the benefit of their experience, research and suggestions.

Proposed legislation to implement some of the recommendations made herein are attached.

Our recommendations, if adopted, will improve the lot of the automobile accident victim, lead to an expansion in the availability of automobile insurance, and provide better conditions for diversified casualty and property insurance in Virginia.

Respectfully submitted,

**ROBERT C. FITZGERALD, *Chairman*
**ARTHUR H. RICHARDSON, *Vice-Chairman*
M. CALDWELL BUTLER
**RUSSELL M. CARNEAL
C. W. CLEATON
*HENRY E. HOWELL, JR.
**EDWARD E. LANE
LEWIS A. MCMURRAN, JR.
**WILLARD J. MOODY
**GARNETT S. MOORE
SAM E. POPE
**JAMES M. THOMSON
JAMES C. TURK
EDWARD E. WILLEY

* Henry E. Howell, Jr., was inaugurated as Lieutenant Governor December 21, 1971 and vacated his Senate seat. Accordingly he did not sign this report.

** Dissenting statements attached.

I move that this committee recommend to the VALC the following:

1. After exhaustive study of the pros and cons of the File and Use, Use and File and Prior Approval systems of rate making it is the opinion of the majority of this committee that for the time being the Commonwealth of Virginia should retain the Prior Approval system we now use.
2. We believe, however, that some modernizing of our present system is needed. Contained in the Schotta report are the means of implementing this modernization. The State Corporation Commission should give particular attention to the recommendations in that report that deal with annual rate hearings for all forms of Fire and Casualty Insurance and making it easier for the statistical data to be filed by the companies and Bureaus.
3. If in a years time after changes are made by the SCC the Prior Approval system does not provide adequate rates so that there is a viable market for insurance in Virginia, then further study should be made with the idea in mind of changing to some form of File and Use.

Willard J. Moody

STATEMENT OF RUSSELL CARNEAL

I feel that some type of "No-Fault" insurance which will reduce or stabilize the premiums now paid by policyholders in Virginia should be adopted. However, without assurance from the Insurance Industry that the plan recommended by the Council will effectively achieve this result, I am unable to endorse such a plan.

STATEMENT OF JAMES M. THOMSON

I intend to support some form of no-fault insurance at this session of the General Assembly. However, I do not commit myself to the limits of benefits established in the proposed legislation contained in the Insurance Industry Report.

I also feel that proposed no-fault legislation should contain provisions for property damage.

STATEMENT OF EDWARD E. LANE

I do not necessarily oppose some type of reparations for automobile accident victims such as the so-called "no fault" concept; however, I do feel that it should not be rushed into in the manner set forth in the report. The proposed lgislation does away in many instances with the present tort system and allows payment of large sums of money to the drunk, willful, wanton and negligent driver. At the same time, the proposed legislation substantially limits payments to the innocent driver or passenger who might be injured or maimed for life and who may have suffered extreme pain, suffering and disability because of a drunk, willful, wanton or negligent driver.

The proposed plan takes away from the innocent and, at the expense of the innocent, gives to the person who violates the law.

The General Assembly will, in my opinion, approve, and I favor, a system of free competition for the establishment of insurance rates. This is a major change in the insurance industry which I believe will result in rates being held to a reasonable level for the public, and make certain that insurance is available for all Virginians. In addition, it has been reported that the insurance company

profits in the automobile field have risen substantially in view of the many safety programs enacted on state and national levels. The results of these programs are just becoming evident and should result in lower premiums. More time is needed to evaluate their results.

The proposed legislation would take away many of the rights of the person who buys or is covered by the insurance and involves extensive and radical changes in our tort system. The present system is based on common law established over hundreds of years.

I do not believe that we should be rushed into changes of this type without thorough study and extensive consideration and contemplation.

I, therefore, must dissent from that portion of the report which adopts the so-called compulsory no-fault concept which substantially takes away the rights of the innocent victim of the wrongful, negligent driver.

Edward E. Lane

DISSENT AS TO NO-FAULT AUTO INSURANCE

I dissent from the report of the majority of the Committee for two reasons. First, I do not believe that the present system should be basically altered, but reform is needed. Second, the plan adopted by the majority does not suit the needs of Virginians and is impractical.

I realize that the present system has been developed under the common law, which says that a man who acts unreasonably must be responsible to those persons whom his acts injure. It is with great reluctance that I would take away the right of the injured man to recover for the wrong of the wrongdoer and at the same time require the injured person to share the costs of the wrongdoer's injuries. However, I recognize that with the development of the transportation system upon our highways that attention to the injured persons must exist to an extent which will prevent even the wrongdoer from becoming a ward of the public. The evidence brought to the Committee and the various plans, too numerous for discussion in this dissent, have as their aim the partial or total depriving of the injured person of his right to sue for pain and suffering. In most cases the guideline for determining a partial elimination of this right is based upon the amount of medical bills or loss of income sustained by an injured party. How, in human experience, one could possibly determine with any sense of reasonableness the injuries sustained by a person by the amount charged by a physician appears to be absurd.

The public needs prompt payment of medical bills and loss of income. For this reason, I support legislation which would provide the required payment of medical bills and loss of income within certain limits. This would require the owner of a vehicle to pay a premium to protect the people using his vehicle. However, it would not take away basic rights and replace the system with an untried and speculative solution. The problem in Virginia is not the problem in Massachusetts or similar states.

Our basic criticism of the proposed plan is:

Section 38.1-389.6. Mandatory Extention of First Party Coverage and Benefits.

I have no quarrel with Mandatory First Party Coverage, for medical and loss of income. In reality, many motorists already have medical pay provisions in their policies (about 70% of private passenger cars). This should be

mandatory and this alone satisfies the underlying purpose and policy of the act, mainly "to provide for the prompt and efficient reparation of losses . . . without regard to fault." The difficulty with the majority's proposal, however, is that in exchange for this coverage the existing rights of many persons to full compensation will be effectively limited or precluded.

In Sections 38.1-389.13 and 38.1-389.14 lie the most unfair and unjust provisions in this bill.

A litigant may bring a tort action provided his medical expense exceeds $1,000.00, except for death or other serious injuries, but he still must prove fault. Once he has proven fault, however, his damages for pain and suffering, mental anguish, inconvenience and other items historically compensable are now determined by reference to a mathematical formula based upon speculative doctors' charges.

He will receive (provided the jury gives him the maximum recovery) a sum equal to 75% of the reasonable medical treatment expenses (whatever that is) incurred to the extent of $1,000.00, and a sum equal to dollar for dollar above $1,000.00, for pain and suffering.

To equate pain, suffering, and related elements of injury with the amounts paid doctors and hospitals shows a lack of awareness of the fact that all injuries vary in their degree from what is considered minor to what is considered serious. More painful injuries often are far less costly than those less painful. Where juries have in the past considered victims as individuals and have deliberated according to the merits of individual cases, this bill now relegates compensation to the science of mathematics.

This will increase litigation as Courts will be asked to construe what are reasonable expenses. This section also provides for the impanelment of not more than three doctors to testify whether the medical expenses are reasonable or, we suppose, whether the injury is a permanent injury which would remove it from this section. Who will bear the cost of this expense?

Section 38.1-389.8 provides from prompt payment of benefits, but imposes no penalty on the insurer for violation. Presumably the injured party would have to sue for his medical expense and if the amount is small, he would not be able to obtain counsel.

In sum, this broad, sweeping proposal will not solve the problems that exist in Virginia. The majority has carte blanche taken it from Illinois, where it may be workable (there is considerable doubt). Our problems are not identical with those of Illinois.

We favor first party coverage but it should not be mandated at the expense of depriving injured persons of their right to fair compensation. The evidence has not shown that there will be a reduction in premiums where the public will acquire protection in a more efficient manner. While we agree that low limit first party coverage should be required, in our opinion a reduction in premiums will result only from safer cars, safer highways, stricter enforcement of traffic laws, and other factors. In brief, no fault insurance subsidizes the reckless driver, at the expense of the safe driver.

It should be noted that in a recent Illinois Court decision (Grace V. Howlett decided on December 29, 1971, in the Circuit Court of Cook County, Illinois), a no-fault law similar to the Virginia proposal was held unconstitutional as a violation of the due process and equal protection clauses of the 14th amendment to the U. S. Constitution.

Robert C. Fitzgerald

Willard J. Moody

Garnett S. Moore

APPENDIX I

SUMMARY OF AND COPY OF THE

VIRGINIA AUTOMOBILE ACCIDENT VICTIM REPARATIONS ACT

The bill which we are proposing from our Committee adds benefits to the present liability and property damage policy. All people who hold bodily injury and property damage liability policies will automatically be given the coverages we propose under our Accident Victim Reparations Act. This approach differs from that taken by some states which have added, or made compulsory, medical payments coverage to every liability policy, at an additional premium.

Inasmuch as there has been much confusion as to what "no-fault" means, and the varying degrees of "no-fault" legislation, we are suggesting as a name for this bill "The Virginia Automobile Accident Victim Reparations Act". This bill provides that on and after the effective date, every liability policy issued for delivery in this State, as well as all policies then in force, will include the following coverages;

1. Medical, hospitalization, and rehabilitation benefits up to a limit of $2,000 per person, and up to $1,000 for necessary funeral expenses.
2. An income continuation benefit which would pay 75% of the earnings lost by the injured person up to a limit of $150 per week for 52 weeks to one who, as a result of a disability arising from the accident, cannot engage in his ordinary occupation. This would mean that a person who was disabled and unable to engage in his ordinary work for a period of 52 weeks, would be able to receive 75% of his lost earnings, not to exceed $150 a week or $7,800 maximum.
3. Loss of service benefits. This is a coverage which would pay up to $12 a day for 365 days per person injured, for services ordinarily performed by the injured person for care and maintenance of the family or family household. A typical example would be of a housewife who is injured and unable to perform her domestic duties as a result of this accident; benefits of $12 a day for 365 days would be available which could amount to $4,380.
4. Survivors benefits. In the event an injured person dies within one year of the date of the accident because of injuries sustained in the accident, there would be a survivors' benefit equal to 75% of the average weekly wage during the 52 week period immediately preceding the accident, not to exceed a limit of $150 a week for 52 weeks. In other words, there would be available a survivors' benefit of a maximum amount of $7,800.

All four of these coverages would be paid on a no-fault basis by the insured's own carrier.

Another important feature of this proposed bill is the availability to every insured of additional optional benefits in each of the four aforementioned coverages, at an additional premium. The bill proposes that a total minimum aggregate limit of not less than $50,000 per person and not less than $100,000 per accident would cover: (1) medical, hospital, rehabilitation and funeral benefits with the only limitation being that there be no more than $2,000 paid for funerals; (2) income continuation would be for an additional 208 weeks, making a total income continuation plan along with the basic coverage of up to 5 years; (3) loss of service benefits could also be continued up to a maximum of 5 years at the same $12 per day figure; (4) likewise, survivors' benefits could be

extended 208 weeks up to a maximum of a 5 year period. In other words, this coverage would wrap around the basic coverage included in every liability policy, and it could be purchased at an estimated premium of under $20 per year. This extra coverage would provide money for catastrophes over and above the basic amount.

It is the intent of this proposed bill that all private passenger vehicles be covered under the bill. It is also worded so that if a pedestrian is struck by a private passenger automobile, the same benefits that are available for the passenger of the automobile would be available for the pedestrian. In light of the large amount of farming in our State, we have also proposed that automobiles used on a farm or ranch which meet the definitions of a private passenger automobile will also be considered a private passenger automobile.

Automobile insurance basic benefits will be primary over and above all other coverages. In the event there are two automobile policies covering the same accident, only one benefit would apply, no person may recover duplicate benefits under the coverages prescribed in this section. Benefits must be paid regardless of collateral sources, including but not limited to the existence of any wage continuation benefits, except the United States Government or any of its agencies shall not receive such benefits for any direct or indirect loss or interest or for services or benefits provided or furnished. Any benefits received under this proposal by the injured person shall be reduced or eliminated to the extent of any benefits to which he is entitled, any workmen's compensation act of any State or federal government.

The proposal permits companies not to pay benefits only when the injured party's intentional or willful conduct is the proximate cause of his own injury.

Another section of the proposal makes it mandatory for the companies to pay all benefits promptly within 30 days of receipt of reasonable expenses and if they should not pay, the injured party would have an action against the company. If the company should be found willfully not to have paid, it could be charged triple damages plus the costs of the injured party. We mention this only because we believe it is necessary in a bill like this to make sure that the companies have reasonable guidelines for making payments but at the same time, if they feel that a person who is willfully negligent in his own act should not be paid, they can make that decision subject to a court verdict against them at a later date.

If any person who receives or is entitled to receive benefits under this proposal files an action for damages, such benefits shall be disclosed and deducted from any award recovered.

The proposal does not permit subrogation by the companies on basic coverages. It does permit subrogation on coverages over and above those amounts. If there is subrogation for any of the benefits, it must be decided by inter-company arbitration procedures approved by the State Corporation Commission. The purpose of this provision is to help the companies reduce unnecessary costs of subrogation, which, in effect, will enable this proposal to offer more benefits. The same condition of set off would hold true against any monies paid out under uninsured motorists' claims. The proposal specifically sets out and encourages the use of advance payments and protects all parties in the sense that it indicates that any advance payments made would be deducted from any verdict or award.

Two important provisions of the proposal are those which limit the rights of action in tort and general damages. In order to finance the additional benefits at no extra cost, it was necessary that some restriction be put on the right of action in tort and the amount of general damages. Specifically, under this

proposal there would be no right of action in tort until the injured party's medical payment expenses exceed $1,000 except in those cases of death, dismemberment, permanent total or permanent partial disability and permanent serious disfigurement. In those cases, there would be no restriction on the tort action. In the field of general damages, the proposal is that general damages or pain and suffering would be limited to 75% of the actual medical expenses on the first $1,000 of medical expenses and in the event that the amount of medical exceeds $1,000, dollar for dollar thereafter. For example, a person with $2,000 of medical expenses could bring an action for pain and suffering and in so doing, would be limited to a recovery of $1,750. Obviously, the limitation on pain and suffering would not apply to death, dismemberment, permanent total or permanent partial disability and permanent serious disfigurement. See § 38.1-389.14 of the proposal on page 27.

The savings generated in these two provisions of the bill make it possible to offer to everybody holding a liability policy in the State the coverages that have been mentioned previously. It is important to point out that this would mean that insureds under the Virginia Automobile Insurance Plan who are unable to purchase automobile medical payments insurance would automatically have it in their policy. The approximately 10 to 15% of people outside of the plan who do not carry such insurance will also have it in their policy. Those people who now carry automobile medical payments insurance would not have to continue it because it would be provided under the liability and property damage policy. Any person who wanted greater protection could purchase the optional $50,000 per person, $100,000 per accident excess coverage.

The proposal also sets out penalties to protect against the presentation of fraudulent claims. It is also important to note that it would be mandatory upon all insurance companies doing business in Virginia to make the protection available on the effective date of the law.

Your Committee recommends the proposal just described. It will provide increased protection to all motorists in our State at no increase in premium. People who now do not carry coverage other than bodily injury, property damage and uninsured motorists coverage will receive added benefits and be able to carry additional optional coverage at minimal cost. People now carrying automobile medical payments, weekly indemnity, and accidental death coverages could have their premiums reduced.

Above all, the proposal provides for prompt payment regardless of fault by a person's own insurance company. It provides for reduced litigation and yet does not eliminate actions in tort in serious cases. It reduces the amount recoverable for pain and suffering and shifts those dollars to payment of actual dollar losses for medical expenses, loss of wages and services, and survivors' benefits.

A BILL

To amend and reenact §§ 8-646.1, 8-646.2, 8-646.3, 38.1-21 and 38.1-31.2, as severally amended, of the Code of Virginia, relating to liability for death or injury to guests in motor vehicle, liability for negligence of minor, civil liability for damages resulting from criminal violations; definitions of kinds of insurance, enforcement of right of subrogation in name of assured; and to further amend the Code of Virginia by adding in Chapter 8 of Title 38.1 an Article numbered 4.1, consisting of sections numbered 38.1-389.3 through 38.1-389.17, to require the coverages and benefits provided for in Article 4.1 of Chapter 8 of Title 38.1 to be included in every policy delivered or issued for delivery in this State insuring against loss resulting from liability imposed by law for accidental bodily injury or death suffered by any person arising out of the ownership, maintenance or use of any private passenger automobile registered or principally used or garaged in this State, provide for the terms of such insurance and delineate the liability of the insured and insurer, and to require that notice of the new coverages be provided policyholders by their insurers.

Be it enacted by the General Assembly of Virginia:

1. That §§ 8-646.1, 8-646.2, 8-646.3, 38.1-21 and 38.1-31.2, as severally amended, be amended and reenacted; and that the Code of Virginia be further amended by adding in Chapter 8 of Title 38.1 an Article numbered 4.1, consisting of sections numbered 38.1-389.3 through 38.1-389.17, as follows:

ARTICLE 5.

Motor Vehicle Accidents.

§ **8-646.1. Liability for death or injury to guest in motor vehicle.**—No person transported by the owner or operator of any motor vehicle as a guest without payment for such transportation and no personal representative of any such guest so transported shall be entitled to recover damages against such owner or operator for death or injuries to the person or property of such guest resulting from the operation of such motor vehicle, unless such death or injury was caused or resulted from the gross negligence or willful and wanton disregard of the safety of the person or property of the person being so transported on the part of such owner or operator. *No right of action shall accrue by virtue of this section to the extent that tort recovery is limited by*

§ 8-646.2. Liability for negligence of minor.—Every owner of a motor vehicle causing or knowingly permitting a minor under the age of sixteen years who is not permitted under the provisions of chapter 5 (§ 46.1-348 et seq.) of Title 46.1 to drive such a vehicle upon a highway, and any person who gives or furnishes a motor vehicle to such minor, shall be jointly or severally liable with such minor for any damages caused by the negligence of such minor in driving such vehicle, *except in those cases where tort recovery is limited by §§ 38.1-389.13 and 38.1-389.14 of the Code of Virginia.*

§ 8-646.3. Civil liability for damages resulting from criminal vio-

lations.—In addition to the punishment prescribed for violation of any section of chapters 1 to 4 of Title 46.1, any person violating any of such provisions shall be liable for such damages as any other person may suffer as a result of such violation, *except in those cases where tort recovery is limited by §§ 38.1-389.13 and 38.1-389.14 of the Code of Virginia.*

§ **38.1-21. Motor vehicle and aircraft.**—Motor vehicle and aircraft insurance means and includes insurance against:

(1) Loss of or damage resulting from any cause to motor vehicles, which shall include trailers, or semitrailers or other attachments designed for use in connection therewith, or aircraft and their equipment, and against legal liability of the insured for loss or damage to the property of another resulting from the ownership, maintenance or use of motor vehicles or aircraft and against loss, damage or expense incident to a claim of such liability, and

(2) Legal liability of the insured, and liability arising under paragraph (b) of § 38.1-381 and against loss, damage, or expense incident to a claim of such liability, arising out of the death or injury of any person resulting from the ownership, maintenance or use of motor vehicles or aircraft, of insurance specified in § 38.1-17.

Any policy of motor vehicle and aircraft insurance covering legal liability of the insured under paragraph (2) of this section and liability arising under paragraph (b) of § 38.1-381 may include appropriate provisions whereby the insuring company assumes the obligation of payment of medical, hospital, surgical and funeral expenses arising out of the death or injury of any person, and any such policy of motor vehicle insurance may include appropriate provisions whereby the insuring company assumes the obligation of payment of weekly indemnity or other specific benefits to persons who are injured and specific death benefits to dependents, beneficiaries or personal representatives of persons who are killed, if such injury or death is caused by accident and sustained while in or upon, entering or alighting from, or through being struck by a motor vehicle, provided that such obligations are irrespective of any legal liability of the insured or any other person.

Motor vehicle insurance also includes the coverages and benefits provided for in Article 4.1 of Chapter 8 of Title 38.1 of the Code of Virginia.

§ **38.1-31.2. Enforcement of right of subrogation in name of assured.**—When any insurance company makes payment to an assured under any contract of insurance, which contract of insurance provides that the company becomes subrogated to the rights of the assured against any other party or parties, such company may enforce, in its own name or in the name of the assured or his personal representative, the legal liability of such other party, *except as provided in § 38.1-389.10(b) of the Code of Virginia.*

Article 4.1

Compensation of Automobile Accident Victims

§ 38.1-389.3. [Short Title] This article may be cited as the Virginia Automobile Accident Victim Reparations Act.

§ 38.1-389.4. Purpose and Rules of Construction.—

(1) This act shall be liberally construed and applied to promote its underlying purpose and policies.

(2) The underlying purpose and policy of this act is to provide for the prompt and efficient reparation of losses from accidental injuries arising out of

the ownership, maintenance or use of a motor vehicle without regard to fault of the injured person except as provided in § 38.1-389.7.

§ 38.1-389.5. Definitions.—As used in this article:

(1) The term "motor vehicle" means every device which is self-propelled or designed for self-propulsion upon or by which any person or property is or may be transported upon a highway, except devices moved by human or animal power or used exclusively upon stationary rails or tracks.

(2) The term "private passenger automobile" means:

(a) A motor vehicle of the private passenger or station wagon type that is owned or hired under a long-term contract and is not used as a public or livery conveyance for passengers.

(b) A motor vehicle with a pick-up body, a delivery sedan, a panel truck or any other four wheel motor vehicle designed for use principally on public roads, owned by an individual or by husband and wife who are residents of the same household, not customarily used in the occupation, profession or business of the insured other then farming or ranching. A motor vehicle used in the course of driving to or from work, which otherwise meets the eligibility requirements hereof, shall be considered a private passenger automobile.

(c) An automobile owned by a farm family, co-partnership or corporation, which is principally garaged on a fram or ranch and otherwise meets the definitions in (a) or (b) above, shall be considered a private passenger automobile.

(3) The term "insured" means a person identified by name in a policy as the insured.

(4) The term "dependents of the insured residing in his household" means a person dependent upon the income of the insured for at least fifty percentum of his support and maintenance, who usually makes his home in the insured household, whether or not temporarily living elsewhere.

(5) The term "essential services" means all reasonable and necessary services usually performed by the injured person for the care and maintenance of the family or family household.

(6) The term "dependents of the deceased residing in his household" means a person dependent upon the income of the deceased for at least fifty percentum of his support and maintenance, who usually makes his home in the deceased's household, whether or not temporarily living elsewhere.

(7) The term "insurer" means any insurance company, association or exchange authorized to transact the business of automobile insurance in the Commonwealth of Virginia.

(8) The term "advance payment" includes but is not limited to the following: Any partial payment, loan or settlement made by any person, corporation or insurer thereof, to another, which is predicated upon possible tort liability or under the contractual obligations of the company to the injured party or on his behalf, including but not limited to medical, surgical, hospital, rehabilitation services, facilities or equipment, loss of earnings, out-of-pocket expenses, death claims, loans, bodily injury or property damage, loss or destruction, and any offer thereof.

(9) The term "medical treatment expenses" means the reasonable and necessary value of services rendered for medical, surgical, X-ray, dental, prosthetic, ambulance, hospital, professional nursing, and, in the case of death, funeral services.

§ 38.1-389.6. Mandatory Extention of First Party Coverages and Benefits.—

(a) On and after the effective date of this article every policy delivered or issued for delivery in this State insuring against loss resulting from liability imposed by law for accidental bodily injury or death suffered by any person arising out of the ownership, maintenance or use of any private passenger automobile registered or principally used or garaged in this State, shall provide coverage affording payment of the following minimum benefits to the named insured and dependents of the insured residing in his household when injured in any motor vehicle accident, and to other persons injured while occupying such insured automobile as guests or passengers or while using it with permission of the named insured, and to pedestrians struck by the automobile in accidents occurring within this State:

(1) Medical, Hospital, Rehabilitation and Funeral Benefits: Payment of all reasonable and necessary expenses arising from the accident for medical, surgical, X-ray, dental, prosthetic, ambulance, hospital, professional nursing and rehabilitation services incurred within one year from the date thereof, subject to a limit of two thousand dollars per person. In addition to any benefits received for medical, hospital or rehabilitation expenses, payment of all reasonable and necessary expenses arising from the accident for funeral services incurred within one year from the date thereof, subject to a limit of one thousand dollars per person.

(2) Income Continuation Benefits: Payment of seventy-five per centum of the income, including but not limited to salary, wages, tips, commissions, fees or other earnings, lost by an individual as a result of a disability to engage in his ordinary occupation, arising from the accident, subject to a limit of one hundred and fifty dollars per week for fifty-two weeks per person.

(3) Loss of Services Benefits: Payments of benefits shall be made in reimbursement of necessary and reasonable expenses incurred for essential services ordinarily performed by the injured person for care and maintenance of the family or family household subject to a limit of twelve dollars per day for three hundred and sixty-five days per person injured.

(4) Survivors' Benefits: In the event the injured person dies within one year of the date of the accident because of injuries sustained in the accident, a survivors' benefit equal to seventy-five percentum of the average weekly income the deceased earned during the fifty-two week period immediately preceding the accident, subject to a limit of one hundred and fifty dollars per week for a period of fifty-two weeks, shall be paid to a surviving spouse dependent upon the deceased for income, or in the event there is no surviving spouse, to any other surviving dependents of the deceased residing in his household. Payments to a dependent surviving spouse may be terminated in the event such surviving spouse dies leaving no surviving dependent children or remarries. Payments to a dependent child may be terminated in the event the child attains majority, marries or becomes otherwise emancipated or dies. Payments to other dependents of the deceased residing in his household may be terminated in the event the dependent marries, dies or becomes financially able to provide his own support and maintenance to the same extent as provided by the deceased.

(b) The maximum benefits payable under the optional excess coverage provided for herein shall include any payments of benefits made pursuant to the basic coverage provided for in paragraph (a) when the insured carries the optional excess coverage provided for in this paragraph. Every company subject to the provisions of paragraph (a) of this section shall also offer, at the option of the person named in the policy as insured, coverage affording payment of the

following minimum excess loss benefits to the named insured and dependents of the insured residing in his household, upon exhaustion of the medical, income continuation, loss of services, and survivors' benefits provided by the company in the same policy and subject to a total minimum aggregate limit of not less than fifty thousand dollars per person and not less than one hundred thousand dollars per accident:

(1) Medical, Hospital, Rehabilitation and Funeral Benefits: Payment of reasonable and necessary expenses arising from accident for medical, surgical, X-ray, dental, prosthetic, ambulance, hospital, rehabilitation, professional nursing and funeral services. However, the benefits payable for funeral services shall not exceed two thousand dollars per person.

(2) Income Continuation Benefits: Payment of seventy-five per centum of the income, including but not limited to salary, wages, tips, commissions, fees or other earnings, lost by an individual as a result of a disability to engage in any gainful occupation, arising from the accident, subject to a limit of one hundred and fifty dollars per week for a total period of two hundred and sixty weeks per person. The insurer providing disability payments may require as a condition for receiving such benefits that the injured person furnish such insurer reasonable medical proof of his inability to work.

(3) Loss of Services Benefits: Payments of benefits shall be made in reimbursement of necessary and reasonable expenses incurred for essential services ordinarily performed by the injured person for care and maintenance of the family or family household subject to a limit of twelve dollars per day for a total of two hundred and sixty weeks per person injured.

(4) Survivors' Benefits: In the event the injured person dies within one year of the date of the accident because of injuries sustained in the accident, a survivors' benefit equal to seventy-five per centum of the average weekly income the deceased earned during the fifty-two week period immediately preceding the accident, subject to a limit of one hundred and fifty dollars per week for a total period of two hundred and sixty weeks, shall be paid to a surviving spouse dependent upon the deceased for income, or, in the event there is no surviving spouse, to any other surviving dependents of the deceased residing in his household. Payments to a dependent child may be terminated in the event the child attains majority, marries or becomes otherwise emancipated or dies. Payments to other dependents may be terminated in the event the dependent marries, dies or becomes financially able to provide his own support and maintenance to the same extent as provided by the deceased.

(c) The benefits set forth in this section shall be paid by the company insuring the private passenger automobile to the injured person except:

(1) Where any person insured under a policy providing such benefits is injured in a motor vehicle accident while occupying or being struck by a motor vehicle not insured for such benefits under another policy, the benefits are payable by the company affording the benefits. However, such benefits may be reduced to the extent of any similar medical, income continuation, loss of services or survivors' benefits coverages available to the injured person under any other motor vehicle policy.

(2) No person may recover duplicate benefits under the coverages prescribed in this section. Optional excess loss benefits under paragraph (b) above shall not be deemed a duplicate benefit to the extent of payments made pursuant to paragraph (b) in excess of the payments provided for in paragraph (a).

(d) The benefits set forth in this section shall be paid regardless of

collateral sources, including but not limited to the existence of any wage continuation benefits except:

(1) Such benefits do not apply to any direct or indirect loss or interest of, or for services or benefits provided or furnished by, the United States of America or any of its agencies coincidental to a contract of employment or of military enlistment, duty or service.

(2) Such benefits shall be reduced or eliminated to the extent the injured person is entitled to benefits under any workmen's compensation act of any state or the federal government.

§ 38.1-389.7. Exclusions Permitted.—The company may exclude benefits to any injured person covered under a policy, where such person's intentional or willful conduct was the proximate cause of the injury.

§ 38.1-389.8. Prompt Payment of Benefits.—

(a) Payment of the benefits set forth under § 38.1-389.6 of this article shall be made promptly after valid proof of loss has been submitted to the company. The existence of a potential cause of action in tort by any recipient of the benefits prescribed in this article does not obviate the company's obligation to promptly pay such benefits. However, if prior to timely payment by the company of such benefits, payment in whole or in part of his loss is received by the recipient from a third person who is or may be liable in tort for such loss, or from the agent or company of such third person, either by way of advance payment or settlement of the potential liability of such third person, the recipient shall disclose such fact and may not collect benefits hereunder to the extent that such benefits would produce a duplication of payment or reimbursement of the same loss, and to the extent of the amount involved, the company may deduct that amount from any present or future benefits to which the recipient is or may be entitled, in addition to such other remedies as exist for recovery at law.

(b) Payments under the coverages provided under § 38.1-389.6 of this article shall be made periodically on a monthly basis as expenses are incurred. Benefits for any period are overdue if not paid within thirty days after the company has received reasonable proof of the fact and amount of expenses incurred during that period. If reasonable proof is not supplied as to the entire claim, the amount supported by reasonable proof is overdue if not paid within thirty days after such proof is received by the company. Any part or all of the remainder of the claim that is later supported by reasonable proof is overdue if not paid within thirty days after such proof is received by the company. In the event the company fails to pay such benefits when due, the person entitled to such benefits may bring an action in contract to recover them. In the event the company is required by such action to pay any overdue benefits, the company shall, in addition to the benefits paid, be required to pay the reasonable attorney's fees incurred by the other party. In the event of a wilful refusal of the company to pay such benefits, the company shall pay to the other party, in addition to other amounts due the other party, an amount which is three times the amount of unpaid benefits in controversy in the action.

§ 38.1-389.9. Offset.—If any person receiving or entitled to receive benefits under this article files an action for damages for bodily injury, sickness, disease or death arising out of the same automobile accident in any court in this State, such benefits shall be disclosed to the court, or in the event of arbitration of such action, to the arbitrators, and the value of such benefits shall be deducted from any award recovered by such person in such proceeding prior to the entry of a verdict or award and may not be considered a part of the verdict, award or recovery obtained by such person.

§ 38.1-389.10. Subrogation and Inter-Company Arbitration.—(a) Except as otherwise provided in this section, where a company has paid benefits provided under this article to an injured person, the company paying such benefits is, to the extent of such payments, subrogated to any right of action for damages by the injured person against the alleged wrongdoer.

(b) Companies paying benefits pursuant to § 38.1-389.6 (a) of this article shall not be subrogated to any right of action for damages of the injured person against the alleged wrongdoer to the extent of such payments.

(c) Where there is an issue of liability or amount of reimbursement necessary in a subrogation action for benefits provided by § 38.1-389.6 (b), it shall be decided by binding inter-company arbitration procedures approved by the State Corporation Commission. Any evidence or decision in the arbitration proceedings is privileged and is not admissible in any action at law or in equity by any party.

§ 38.1-389.11. Uninsured Motorists Coverage.—All benefits provided under § 38.1-389.6 of this article may be deducted by the company from any recovery received by an injured person pursuant to the provisions of § 38.1-381(b).

§ 38.1-389.12. Advance Payments.—(a) In any claim or action in tort or contract brought against any person as a result of bodily injury, sickness, disease or death caused by accident and arising out of the operation, ownership, maintenance or use of a motor vehicle, the person or company against whom such a claim or suit for benefits or damages is made, or if such person is insured against loss by reason of his liability to pay such damages, the company of such person may make or offer advance payments to such claimant, or plaintiff, as the case may be.

(b) This section applies to any action commenced in this State, regardless of the situs of the accident, location of the property or residence of the parties.

(c) An advance payment does not interrupt the statute of limitations. However, any person, including any company, who makes such advance payment must at the time of the first payment, notify the recipient thereof in writing of the date the applicable statute of limitations will expire.

(d) In any action in which the defendant, his company or any other person has made or offered to make an advance payment to or on behalf of any claimant prior to trial, any evidence of or concerning that advance payment is not admissible in evidence or may not be construed as an admission of liability in any action brought by the claimant, his survivors or personal representative, to recover damages for personal injuries or for the wrongful death of another, or for property damage or destruction.

(e) In the event that such action results in a verdict in favor of the claimant after the verdict has been rendered the defendant shall be allowed to introduce evidence of such payments and the court shall then reduce the amount awarded to the claimant by the amount of payments made prior to trial.

(f) No such payment made under this section by a company may be construed to be in lieu of or in addition to the limits of liability of the company under any existing policy of insurance. Such sums paid in advance are considered to have been made under the limits of the policy and shall be credited to the company's obligation to the insured arising from such policy and shall be deducted therefrom.

§ 38.1-389.13. No right of action for damages in tort shall accrue against an alleged wrongdoer as a result of bodily injury, sickness, disease or death

caused by accident arising out of the operation, ownership, maintenance or use of a motor vehicle within this State in favor of any person insured under this article unless medical treatment expenses exceed one thousand dollars except in cases of death, dismemberment, permanent total or permanent partial disability or permanent serious disfigurement.

§ 38.1-389.14. General Damages.—(a) In any action in tort brought as a result of bodily injury, sickness, disease or death caused by accident and arising out of the operation, ownership, maintenance or use of a motor vehicle within this State, such damages as may be recoverable by a person insured under this article for pain, suffering, mental anguish and inconvenience may not exceed the total of a sum equal to seventy-five per centum of the reasonable medical treatment expenses of the claimant if and to the extent that the total of such reasonable expenses is at least one thousand dollars, and a sum equal to the amount of such reasonable expenses, in excess of one thousand dollars.

(b) The limitations prescribed in paragraph (a) of this section do not apply in cases of death, dismemberment, permanent total or permanent partial disability or permanent serious disfigurement.

(c) The court on its own motion or on motion of either party shall designate an impartial medical panel of not more than three licensed physicians to examine the claimant and testify on the issue of the reasonable value of medical treatment services or any other issue hereunder to which such expert medical testimony would be relevant.

§ 38.1-389.15. Medical and Other Disclosure.—Any person who claims damages for personal injuries from another person, or benefits therefor under an insurance policy, arising out of the operation, maintenance or use of a motor vehicle, upon request of the defendant or company from whom recovery is sought shall submit to physical examination by a physician or physicians selected by the defendant or company as may reasonably be required and shall do all things reasonably necessary to enable the defendant or company to obtain medical reports and other needed information to assist in determining the nature and extent of the claimant's injuries and the medical treatment received by him. Copies of such medical reports and information obtained shall be forwarded to the claimant or his attorney. If the claimant refuses to cooperate in responding to requests for examination and information as authorized by this section, evidence relevant to such noncooperation is admissible in any suit or arbitration proceeding filed by the claimant for damages for such personal injuries or for benefits under any insurance policy.

§ 38.1-389.16. Authority of the State Corporation Commission.—The Commission is hereby empowered to issue and promulgate all rules, regulations, definitions and minimum provisions for forms necessary to implement the provisions of this article. The Commission may approve schedules of reasonable maximum benefit payments which companies may incorporate into their policies of basic mandatory or optional excess coverages herein prescribed.

§ 38.1-389.17. Severability.—If any provision of this article or the application thereof to any person or circumstance is held invalid, such invalidity does not affect other provisions or applications of this article which can be given effect without the invalid application or provision, and to this end the provisions of this article are declared to be severable. However, §§ 38.1-389.13 and 38.1-389.14, or any part thereof, of this article are expressly made inseverable.

2. § 1. All insurers as are required by the provisions of this act to offer insurance as herein provided must give by December one, nineteen hundred

seventy-two such written notice as is sufficient to reasonably apprise such insureds to whom the provisions of this act are applicable of the revised coverage made mandatory under § 38.1-389.6 (a) and the optional coverage made available under § 38.1-389.6 (b) as described herein.

§ 2. The State Corporation Commission shall devise a standard notice form, the material content of which shall be employed by all insurers in notifying their insureds.

§ 3. In consideration of retention of its license to write automobile liability insurance each insurer shall be deemed to provide the benefits prescribed in § 38.1-389.6 (a) as specified in this act on policies outstanding on the effective date of this act which are required to contain such coverage.

3. This act shall be effective January one, nineteen hundred seventy-three, except for §§ 1 and 2 of clause 2 which shall be effective November one, nineteen hundred seventy-two.

COST INFORMATION
ON THE NEW COVERAGE

October 14, 1971

Honorable Stanley A. Owens
P. O. Box 109
Manassas, Virginia 22110

Dear Stanley:

Following the meeting of the Insurance Industry Study Committee on Monday, October 11, 1971, the No-Fault Insurance Subcommittee met informally.

During that meeting, I was requested to forward a copy of the proposed no-fault legislation presented by the Subcommittee to seven organizations, namely, American Insurance Association, American Mutual Insurance Alliance, National Association of Independent Insurers, United States Department of Transportation, The AEtna Casualty and Surety Company, Virginia Farm Bureau Mutual Insurance Company, and Virginia Mutual Insurance Company, requesting each of them to "price" same, and advise the Subcommittee in detail relative thereto.

For your information and record, I am attaching hereto a copy of the text of the letters sent Tuesday, October 12, 1971 to each of the above named organizations requesting such "pricing" information and data.

If you feel any additional information is desired in this connection, kindly so advise and I will proceed to request these organizations to furnish same.

Kindest personal regards.

Sincerely yours,

Garland L. Hazelwood, Jr.
Actuary—Fire and Casualty

GLH,Jr:dbh

Attachment

COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION
BUREAU OF INSURANCE
RICHMOND 23209

EVERETTE S. FRANCIS
COMMISSIONER OF INSURANCE

October 12, 1971

Proposed "no-fault" insurance legislation has been drafted by the No-Fault Insurance Subcommittee, and has been presented to the Insurance Industry Study Committee of the Virginia Advisory Legislative Council, to which it reports concerning "no-fault" automobile liability insurance legislation for Virginia.

The Subcommittee has requested the writer to forward you a copy of the proposed "no-fault" legislation, requesting you to "price-out" such legislation using Virginia data, to determine whether such legislation is "in balance", and the margin of profit remaining.

If complete Virginia data, or precise dollars, involved are not available for some calculations, reasonable estimates on other bases will be acceptable therefor by the Subcommittee.

In any event, detailed explanations of the calculations, bases, estimates, etc., should be furnished for the Subcommittee's consideration.

In addition, any other available information which you feel might be of benefit to the Subcommittee in its deliberations concerning this subject, including, but not limited to, any coverage limits, combinations of general damages limitations, threshold penetrations, etc., and/or inclusions or exclusions of coverages, etc., for which "pricing" can be determined, will be greatly appreciated by the Subcommittee.

The Subcommittee is requesting other insurance companies and trade organizations to furnish similar information and data for its consideration.

The Subcommittee is desirous of receiving the information requested above at the earliest possible moment, inasmuch as the Subcommittee must again report to the Insurance Industry Study Committee in the near future.

Very truly yours,

Garland L. Hazelwood, Jr.

Garland L. Hazelwood, Jr.
Actuary - Fire and Casualty

GLH,Jr:dbh
Enclosure

Aetna LIFE & CASUALTY

INTEROFFICE COMMUNICATION

TO Charles H. Longfield, General Manager, Richmond Office

FROM Billy B. Lee, Director, Government Relations, HO Law Department

DATE November 2, 1971

SUBJECT NO-FAULT - VIRGINIA

Dear Chuck:

George Katz has reviewed the proposed no-fault insurance legislation that you sent me on 10-14-71. The plan looks good with one exception and that is the inconsistency that exists between § 46.1-514.10 and § 46.1-514.11. These two sections are in conflict. If the "first" section were left in and the "second" section were removed, the bill would be very good and provide a premium savings for Virginia motorists. On the other hand, if the "second" section were left in and the "first" section removed, the bill would be weak and provide no savings for Virginia motorists. With both sections in the bill is confusing and prevents us from making a clear evaluation.

In your absence I called Mr. Garland L. Hazelwood, Jr. to discuss our problem in furnishing a cost estimate. Since neither of us was an attorney, we decided it was best to have Mr. Willis Robertson call Mr. George Katz to discuss the problem created by the two conflicting sections. This call was completed and George told him that the "first section" would provide a 15% reduction on B.I. rates only and that the "second section" would provide no savings.

I assume this satisfies the inquiry made by Mr. Hazelwood, but if you find that it does not I suggest that they straighten out the problem and let us take another look.

Billy

bmt

cc: H. L. Dickinson, Assistant Vice President, Field Management
George Katz, Assistant Vice President, P&D-Mass Mktg.

NATIONAL ASSOCIATION of INDEPENDENT INSURERS

Thirty West Monroe Street • Chicago, Illinois 60603
312 • 263-6038

GEORGE E. DeWOLF, Assistant General Counsel

ARTHUR C. MERTZ, Vice President and General Counsel

October 25, 1971

Mr. Garland L. Hazelwood
Virginia Insurance Department
700 Blanton Building
P. O. Box 1157
Richmond, Virginia 23209

Dear Mr. Hazelwood:

Upon receiving your letter of October 12, with the committee draft of a proposed Virginia auto reparations law, we asked the Chairman of our Actuarial Sub-committee on Costing, if his computer program could be used to comply with your request. We have a computer model which was capable of costing the proposed Virginia program, which you forwarded, in relation to present insurance rates now paid by Virginia motorists. According to the computer, the new proposal would result in the following cost increases or decreases for the average Virginia motorist purchasing the following coverages:

Insured carries bodily injury, property damage and UM coverage in average limits -- 7.2% increase

Insured carries the above plus $2,000 medical payments -- 2.9% decrease

Insured carries all the above plus collision and comprehensive -- 1.8% decrease

In addition, you will be interested to know that the cost of the excess personal injury coverage for the average Virginia motorist is predicted at $12 per year.

We must, however, make some cautionary statements with regard to the above figures. Although the computer, with certain assumptions fed into it, will produce figures which purport to be accurate to one-tenth of one percent, we have always been very frank to caution that the assumptions which must be used in order to make an estimate are speculative in many details. There is no data in existence from which costs for the proposed system can be simply and mathematically calculated. Instead, the data used must be "adjusted" by some judgment factors because it was collected under different policy coverages. We believe those assumptions our committee has used are as carefully and conservatively constructed as is possible, but undoubtedly some variation should be expected when actual experience under a new reparations system starts coming in.

By way of further explanation, the above figures apply to Virginia statewide averages. They will not necessarily hold true as regards a particular territory or a particular rating classification. Although I do not believe our actuaries have spoken on the following, as a generalization, I would expect that the low-rated territories and classifications will not show

as great a cost saving and may, in some cases, even show a cost increase. On the other hand, I believe the higher-rated territories will, in most cases, show a greater cost saving.

The Chairman of our Subcommittee on Costing, Mr. Charles Hewitt of Allstate has talked with me at length about your request for supporting assumptions, calculations, etc. While this is certainly a reasonable request, Mr. Hewitt is unable to supply it at this time because the computer model has not been written up in narrative, English language form, and to do so would be quite an undertaking. I do believe, however, that if you would like to satisfy yourself as to the reasonableness of the underwriting assumptions, the range of probable error in the calculations, etc., that we could arrange a meeting between Mr. Hewitt and some of your people. We will be happy to cooperate with you in any other way, also.

Sincerely,

George E. DeWolf
Assistant General Counsel

GED:jd

State Farm Mutual Automobile Insurance Company

Home Office: Bloomington, Illinois

Actuarial Department
D. A. Nelson, Actuary

November 12, 1971

MEMO TO: Mr. D. T. Zimmerman, Regional Vice President
Eastern Office

RE: Virginia No-Fault

Attached are a series of exhibits detailing my cost estimates for the proposed No-Fault plan. I hope they will be useful (and understandable). You will note that the estimates are based on a mixture of factual data--drawn largely from the DOT Closed Claim Survey--and judgmental factors. All of which points to the fact that these cost estimates are just that--estimates. (Also, please note that the split between residual liability and personal injury coverage has been reversed from my earlier memo; it should be 46/51 rather than 51/46. The total, of course, is still the same.)

In terms of State Farm's present rates, the average annual cost effects can be presented as follows:

		Proposed Plan	
Coverage	Present	Effect	Ind. Rate
BI, UM	$ 52	- 3%	$ 50
PD	27	-	27
Subtotal	$ 79	-2.5%	$ 77
MPC	8	-100%	0
Subtotal	$ 87	-11.5%	$ 77
COMP	16	-	16
COLL	47	-	47
Total	$150	-6.7%	$140

On this basis also, the indicated rate for excess Personal Injury coverage would be about $14 per year (= 27% of $52).

Dale Nelson
DN:eg

cc: Mr. A. C. Curry
Mr. Leo Jordan
Mr. J. V. Naffziger

P.S. Zimmerman:

After signing the letter on the Virginia cost estimates for No Fault, I realized that I had overlooked Coverages S & T (Accidental Death and Disability). These coverages presently average $6 per year per policy; so I have included them in a revised table.

		Proposed Plan	
Coverage	Present	Effect	Ind. Rate
BI, UM	$ 52	- 3%	$ 50
PD	27	-	27
Subtotal	$ 79	-2.5%	$ 77
MPC	8	-100%	0
Subtotal	$ 87	-11.5%	$ 77
S & T	6	-100%	0
Subtotal	$ 93	-17.2%	$ 77
COMP	16	-	16
COLL	47	-	47
Total	$156	-10.3%	$140

DN

VIRGINIA AUTOMOBILE ACCIDENT
VICTIM REPARATIONS ACT

Cost Estimates—Summary

1. Distribution of Present Loss Costs for Bodily Injury and Uninsured Motorist Coverages (15/30 Limits) - See Sheet 2.

	Type of Indemnity		
	Economic Loss	General Damages	
Serious Cases (Fatal, Permanent Disability, etc.)	13%	24%	
Non-Serious	27	36	
	40%	60%	
Total			100%

2. Distribution of Loss Costs under Proposed Plan - See Sheets 3 and 4.

Residual Liability:			
Serious Cases	13%	24%	
Non-Serious	6	3	
	19%	27%	
Subtotal			46%
Personal Injury Coverage (net of subrogation):			
All Cases	51%	-	
Subtotal			51%
Grand Total			97%

3. Thus, assuming no net change in loss adjustment expense (achieved by a reduction in 3rd Party Liability claims offset by a large number of 1st Party claims) and no change in other operating expenses, the savings in basic limits BI and UM premiums would be about 3%.

Distribution of Loss Costs under Bodily
Injury Liability and Uninsured Motorist Coverage

1. Limited to $10,000 per person.

	Number of Cases	Economic Loss*		General Damages		Total	
Serious	1,993	$ 3,497,610	11.8%	$ 5,995,095	20.2%	$ 9,492,705	32.0%
Non-Serious	24,486	7,995,817	27.0	12,151,580	41.0	20,147,397	68.0
Total	26,479	$11,493,427	38.8%	$18,146,675	61.2%	$29,640,102	100.0%

Distribution of Loss Costs under Bodily
Injury Liability and Uninsured Motorist Coverage

2. Unlimited

Serious	1,993	$ 5,207,610	14.5%	$ 8,505,095	23.7%	$13,712,705	38.2%
Non-Serious	24,486	8,378,317	23.3	13,839,080	38.5	22,217,397	61.8
Total	26,479	$13,585,927	37.6%	$22,344,175	62.2%	$35,930,102	100.0%

* Excluding Future Wage Loss in Fatal Cases.

Source: Industry Closed Claim Survey conducted for Department of Transportation.

Effect of Limitations on Tort Action

1. For Non-Serious Cases:

Amount of Medical Expense	Number of Cases	Medical Expense	Economic Loss	General Damages
$ 0 - $ 500	22,761	$2,282,334	$4,956,093	$ 9,911,153
500 - 1,000	1,075	763,875	1,461,462	1,881,246
1,000 - 5,000	626	1,113,000	1,671,616	1,917,647
5,000 +	24	277,500	289,146	129,034
	24,486	$4,436,709	$8,378,317	$13,839,080

2. Impact of $1,000 Medical Threshold and Pain & Suffering Formula

Economic Loss = 1,671,616 ÷ 289,146 = 1,960,762
= 23.4% of Total Economic Loss for Non-Serious Cases

General Damages = 1.113,000 ÷ 277,500 - 250 • (626 ÷ 24) = 1,228,000
= 8.9% of Present General Damages for Non-Serious Cases

3. Therefore, in relation to present costs (Sheet 1), the relative cost of residual liability for non-serious cases is:

Economic Loss = 6 = 23.4% of 27
General Damages = 3 = 8.9% of 36

Source: DOT Closed Claim Survey.

Cost of Personal Injury Coverage

1. Distribution of Total Economic Losses (excluding Survivor's Benefit).

	Present	Change*	No-Fault Basis
Total - Sheet 7	40	+80%	72
Medical	22		40
Wage Loss	15		27
Other	3		5

* See Sheet 5.

2. Effect of Subrogation.

Net Economic Loss = Total Economic Loss - Economic Loss recoverable through tort (Section 2, Sheet 1)

= 72 - 19 = 53

Breakdown:

	Serious	Non-Serious	Total
Medical	7	20	27
Wage Loss	2	19	21
Other	1	4	5
Total	10	43	53

3. Effect of Benefit Limits.

Medical ($2,000)	= 24 = 90% of 27
Wage Loss (75%/$150 per wk)	= 19 = 90% of 21
Other	= 5
	48

4. Cost of Survivor's Benefit.

Approximately 40% of the injured persons incur wage loss and 1% of these result in death. Assuming an average benefit of $7500, the relative cost is

$$3 = \frac{7500}{250} \cdot 27 \cdot (.004)$$

where $250 is the average wage loss for all cases (Sheets 2 and 3) and 27 is the relative cost for these cases (Section 1).

5. Therefore, in relation to present costs, the relative net cost for Personal Injury coverage is 51 points (= 48 + 3).

Source: DOT Closed Claim Survey.

Estimated Increase in Economic Loss Costs

		Type of Accident			
		Multi-Car	Single Car	Pedestrian	Total
(1)	Relative Distribution of Accidents	650	250	100	1,000
(2)	Number of Vehicles per Accident	2.5	1.0	1.0	
(3)	Number of Vehicles, (1) x (2)	1,625	250	100	1,975
(4)	Number of Injuries per Vehicle	1.5	1.5	1.0	

Estimated Increase in Economic Loss Costs

		Type of Accident			
		Multi-Car	Single Car	Pedestrian	Total
(5)	Number of Injured Persons, (3) x (4)	2,438	375	100	2,913
(6)	Relative Severity of Injuries	100	150	200	
(7)	Relative Loss Cost, (5) x (6)	243,800	56,250	20,000	320,050
(8)	Portion of Injured Persons currently recovering through tort (BI or UM)	64%*	10%	80%	
(9)	Number Recovering, (5) x (8)	1,560	38	80	1,678
(10)	Relative Loss Cost, (6) x (9)	156,000	5,700	16,000	177,700

Expected Increase in Number of Claims, (5)/(9) +74%
Expected Increase in Economic Loss Costs, (7)/(10) +80%

* 10% of Injured Persons in insured vehicle, plus 100% of Injured Persons in other vehicles.

Source: DOT Closed Claim Survey, The National Safety Council's Accident Facts.

Miscellaneous Estimates

1. Excess Personal Injury Coverage

Medical	6 = 15% of 40, from Sheet 4
Wage Loss	7 = 25% of 27
Survivor's Benefit	14 = 3 x 5, less 1 point for interest discount
Total	27% of Present Loss Costs

2. Alternatives to basic Personal Injury coverage (Section 3, Sheet 4) -

$5,000 Medical:	Add 2 points (= 10% of 24).
75%/$200 per wk. Wage Loss:	Add 2 points (= 10% of 19).
85%/$200 per wk. Wage Loss:	Add 4 points (= 20% of 19).

Source: DOT Closed Claim Survey.

State	Effective date	Statutory Premium Reduction	Statutory Requirements	First Party Coverages: Maximum Benefit	First Party Coverages: Coverages	First Party Coverages: Deductibles	Tort and Pain and Suffering Limitations	Property Damage
Massachusetts	1-1-71	15% reduction Bodily Injury premium. 25% reduction in Medical Payments premium.	Compulsory first party and Liability coverages.	$2,000 per person. No maximum per accident	100% of medical expenses. 75% of lost wages, 100% of lost services.	Optional deductibles of $250 $500, $1,000 or $2,000 on first party benefits. $100 or $200 dadectibles on Property Damage Liability.	Pain and suffering suits are permitted only if medical expense exceeds $500, permanent disability or disfigurement, fractures or death. No limitations on P.D. suits.	Yes, but enacted details not known.
Florida	1-1-72	15% reduction in basic limits Bodily Injury and Property Damage premium.	Compulsory first party and Liability coverages.	$5,000 per person. No maximum per accident.	100% of medical expense. 85% of lost wages, 100% of lost services.	Optional deductibles of $250, $500, or $1,000.	Pain and suffering suits are permitted only if medical expense exceeds $1,000, permanent disfigurement, disability, certain fractures or death. Suits are not permitted for certain collision losses less than $550.	Yes Property Damage under $550 paid regardless of fault, over $550 tort applies from first dollar.
Illinois	1-1-72	None.	First party coverages mandatory if Liability purchased.	$14,100 per person. No maximum per accident.	Medical Expenses up to $2,000 per person, 85% of lost wages to $150 per week for 52 weeks, lost services up to $12 a day for 52 weeks. Must offer excess loss up to $50,000 per person. $100,000 per accident.	None	Damages for pain and suffering may not exceed 50% of first $500 medical expenses plus 100% of those expenses in excess of $500, except in the case of death, dismemberment, permanent disability or disfigurement.	No.

COMPARING THE NO-FAULT LAWS

State	Effective date	Statutory Premium Reduction	First Party Coverages: Statutory Requirements	First Party Coverages: Maximum Benefit	First Party Coverages: Coverages	First Party Coverages: Deductibles	Tort and Pain and Suffering Limitations	Property Damage
Oregon	1-1-72	None	First Party coverages mandatory if Liability purchased.	$11,500 per person - no maximum per accident.	Medical Expenses up to $3,000 per person, 70% of lost wages to $500 per month for 52 weeks, loss of services up to $12 a day for 52 weeks.	Optional deductibles up to $250.	No limitation; it appears that direct benefits must be 100% reimbursed before payment of any tort judgment to the liability claimant.	No
Delaware	1-1-72	None. Premium increase for additional coverages is a possibility.	Compulsory including Full Liability.	$10,000 per person and $20,000 per accident.	100% of medical expenses; 100% of lost wages; 100% of lost services.	Yes. Not described.	No limitation.	No.
Virginia Proposal		None.	First party coverages mandatory if Liability purchased.	$21,900 per person. No maximum per accident.	Medical Expenses up to $2,000 per person, funeral benefit up to $1,000 per person, 75% of lost wages to $150 per week for 52 weeks, lost services up to $12 a day for 365 days. Survivor benefit 75% of wages in previous year up to $150 per week. Companies must offer excess average up to $50,000 per person, 100,000 per accident.	None.	Pain and suffering suits are permitted only if medical expenses exceed $1,000 and is limited to 75% of first $1,000 of medical expense and 100% of those expenses in excess of $1,000 except in case of death, dismemberment, permanent total or permanent partial disability and permanent serious disfigurement. No right of action shall accrue against an alleged wrongdoer in favor of a person insured under this article unless his medical treatment expenses exceed $1000 except in cases of death, dismemberment, permanent total or permanent partial disability and permanent serious disfigurement.	No.

State	Effective date	Statutory Premium Reduction	Statutory Requirements	First Party Coverages: Maximun Benefit	First Party Coverages: Coverages	First Party Coverages: Deductibles	Tort and Pain and Suffering Limitations
Minnesota	1/1/70	None	No-fault coverages available on optional basis as supplement to liability policy.	$16,680 to the named insured.	Medical expense up to $2,000. Death benefits of at least $10,000. Loss of wages up to $3,120 and loss of services up to $1,560.	None	No provisions

State	Property Damage
Minnesota	No provisions

APPENDIX II
VIRGINIA
COMPETITIVE PRICING
BILL

A BILL

To amend and reenact §§ 38.1-43.5, 38.1-174, 38.1-342.1 and 38.1-362.4, as severally amended, of the Code of Virginia, relating to when existing rates become subject to the provisions of this title; examination of insurance companies; filing and approval of policy forms by the State Corporation Commission; forms of policies, applications, evidence of coverage, rate manual and powers of the State Corporation Commission; and to amend the Code of Virginia by repealing Chapter 6 of Title 38.1 consisting of §§ 38.1-218 through 38.1-279, relating to the regulation of certain property and casualty insurance rates by the State Corporation Commission before their use in Virginia, and to further amend the Code of Virginia by adding in Title 38.1 a chapter numbered 6.1 consisting of §§ 38.1-218.1 through 38.1-245, relating to the regulation of certain property and casualty insurance rates by independent action and reasonable price competition among insurers.

Be it enacted by the General Assembly of Virginia:

1. That §§ 38.1-43.5, 38.1-174, 38.1-342.1 and 38.1-362.4, as severally amended, of the Code of Virginia, be amended and reenacted, and that the Code of Virginia be amended by adding in Title 38.1 a chapter numbered 6.1 consisting of §§ 38.1-218.1 through 38.1-245.1, as follows:

§38.1-43.5. Existing rates.—Every rate heretofore filed and in effect immediately preceding July one nineteen hundred ~~fifty two~~ *seventy-two*, is continued and made effective subject to the provisions of this title.

§38.1-174. Examinations; when authorized or required—Whenever the Commission deems it expedient for the protection of the interests of the people of this State, it may make or direct to be made an examination into the affairs of any insurance company authorized to do or doing any insurance business in this State. The Commission may also make or direct to be made, whenever necessary or advisable, an examination into the affairs of ~~(a) any rating organization, including the Virginia Insurance Rating Bureau and the Virginia Automobile Rate Administrative Bureau, (b) any advisory organization as defined in §38.1-272, (c) any unified facility of the type referred to in §38.1-238, (d) any joint underwriting or joint reinsurance group, association or organization, (e)~~ *(a)* any person having a contract under which he enjoys in fact the exclusive or dominant right to manage or control any licensed insurance company, ~~(f)~~ *(b)* any person holding the shares of capital stock or policyholder proxies of any domestic insurance company for the purpose of control of its management either as voting trustee or otherwise, or ~~(g)~~ *(c)* any person engaged or assisting in, or proposing or claiming to engage or assist in the promotion or formation of a domestic insurance company.

The Commission shall examine or cause to be examined every domestic insurance company at least once in every three years.

When the Commission deems it expedient or advisable to examine the condition and affairs of any foreign or alien insurance company or any other foreign or alien organization subject to examination, as far as is practicable such examination shall be made in cooperation with the insurance depart-

ments of other states. The examination of any alien insurance company shall be limited to its insurance transactions in the United States unless the Commission deems a complete examination of the company to be necessary or desirable.

In lieu of making its own examination, the Commission may accept a full report of the examination of a foreign or alien insurance company, rating or other organization, group, association, facility or person referred to herein, duly authenticated by the insurance supervisory official of the state of domicile or of entry.

§38.1-342.1. Policy forms to be filed with Commission; notice of approval or disapproval; exceptions.—No policy of life insurance, industrial life insurance, group life insurance or accident and sickness insurance, no fraternal benefit certificate and no annuity or pure endowment contract or group annuity contract shall be delivered or issued for delivery in this State unless a copy of the form thereof, and, in the case of a policy of accident and sickness insurance, the rate manual showing rates, rules and classification of risks applicable thereto, shall have been filed with the Commission. No application form shall be used with, and no rider and no endorsement, except as hereinafter provided, shall be attached to or printed or stamped upon such policy or contract unless the form of such application, rider or endorsement has been filed with the Commission. No individual certificate shall be used in connection with any such group life insurance policy or group annuity contract unless the form thereof has been filed with the Commission.

None of the above-mentioned policies, contracts and certificates shall be delivered or issued for delivery in this State and no applications, riders and endorsements shall be used in connection therewith unless the forms thereof have been approved in writing by the Commission as conforming to the requirements of this title and not inconsistent with law.

The Commission may disapprove the form of any such policy, contract or certificate, or of any application, rider or endorsement, if such form:

(1) Does not comply with the requirements of the laws of this State;

(2) Has any title, heading, backing or other indication of the contents of any or all of its provisions which is likely to mislead the policyholder, contract holder or certificate holder; or

(3) Contains any provisions which encourage, misrepresentation or are misleading, deceptive or contrary to the public policy of this State.

The Commission shall, within thirty days after the filing of any form requiring approval, notify the insurance company or fraternal benefit society filing the same of its approval or disapproval of such form, and in event of disapproval its reason therefor; provided the Commission, at its discretion, may extend by not more than an additional thirty days the period within which it must indicate its approval or disapproval of such form, and in event of disapproval its reason therefor. Any form not approved or disapproved by the Commission shall be deemed approved at the expiration of the said thirty days if the period is not extended, or at the expiration of the extended period if any. Any company or society aggrieved by the disapproval of any form may proceed as indicated in ~~§38.1-276~~ *§38.1-242.1.*

The provisions of this section shall not apply to any special rider or endorsement on any policy, except a policy of accident and sickness insurance, which relates only to the manner of distribution of benefits or to the reservation of rights and benefits under such policy, and which is used at the request of the individual policyholder, contract holder or certificate holder.

§38.1-362.4. Forms of policies; applications; evidence of coverage; rate manual; powers of Commission.—The forms of the policies, applications, certificates or other evidence of insurance coverage and the rate manual showing rates, rules and classification of risks applicable thereto shall be subject to the applicable provisions of §38.1-342.1. The Commission may disapprove the premium rates for such insurance, or any class thereof, if it finds that such rates are by reasonable assumptions excessive in relation to the benefits provided. In determining whether such rates by reasonable assumptions are excessive in relation to the benefits provided, the Commission shall give due consideration to past and prospective claim experience on such insurance, or other comparable insurance, within and outside this State, and to fluctuations in such claim experience, to a reasonable risk charge, to contribution to surplus and contingency funds, to past and prospective expenses, both within and outside this State, and to all other relevant factors within and outside this State, including any differing operating methods of the insurers joining in the issue of such insurance. In the event of any such disapproval the association may proceed as indicated in ~~§38.1 276~~ *§38.1-242.1.* In exercising the powers conferred herein and by said §38.1-342.1, the Commission shall not be bound by any other requirements of this title with respect to required or standard provisions to be included in the forms of the policies, applications, certificates or other evidence of insurance coverage filed with the Commission.

CHAPTER 6.1 REGULATION OF RATES

§38.1-218.1. CONSTRUCTION AND PURPOSES.—

(a) CONSTRUCTION.—This act shall be liberally construed to achieve the purposes stated in subsection (b), which shall constitute an aid and guide to interpretation but not an independent source of power.

(b) PURPOSES.—The purposes of this act are:

(1) To protect policyholders and the public against the adverse effects of excessive, inadequate or unfairly discriminatory rates;

(2) To encourage, as the most effective way to produce rates that conform to the standards of paragraph (1), and independent action by and reasonable price competition among insurers;

(3) To provide formal regulatory controls for use if independent action and price competition fail;

(4) To authorize cooperative action among insurers in the rate-making process, and to regulate such cooperation in order to prevent practices that tend to bring about monopoly or to lessen or destroy competition;

(5) To provide rates that are responsive to competitive market conditions and to improve the availability of insurance in the State;

(6) To regulate the business of insurance in a manner that will preclude application of federal antitrust laws.

§38.1-219.1. DEFINITIONS.—

In this act, unless contrary to context:

(1) "Supplementary rate information" includes any manual or plan of rates, statistical plan, classification, rating schedule, minimum premium policy fee, rating rule, rate-related underwriting rule and any other information, not otherwise inconsistent with the purposes of this Chapter, prescribed by rule of the Commission.

(2) "Rate service organization" means any organization or person, other than a joint underwriting association under §38.1-232.1 or any employee of an insurer, or in the case of insurers under common control or management an employee of any such insurer, who assists insurers in rate-making or filing by:

(a) Collecting, compiling and furnishing loss or expense statistics;

(b) Recommending, making or filing rates or supplementary rate information; or by

(c) Advising about rate questions, except as an attorney giving legal advice.

(3) "Market segment" means any line or kind of insurance or, if it is described in general terms, any subdivision thereof or any class of risks or combination of classes.

(4) The term "Rate" or "Rates" wherever used in this Chapter shall be deemed to mean rate of premium, policy and membership fee, or any other charge made by an insurer for or in connection with a contract or policy of insurance of the kind to which this Chapter applies.

§ 38.1-220.1. SCOPE OF APPLICATION.—

(a) The provisions of this chapter apply to the kinds of insurance defined in §§ 38.1-6, 38.1-7, 38.1-8, 38.1-9, 38.1-10, 38.1-11, 38.1-12, 38.1-13, 38.1-14, 38.1-15, 38.1-16, 38.1-19, 38.1-21, 38.1-22 and 38.1-23 of this title except that rates for insurance in the Virginia Automobile Insurance Plan and the coverages provided pursuant to Chapter 19 of Title 38.1 shall be subject to prior approval by the State Corporation Commission before they may be used in this State.

(b) The provisions of this chapter do not apply to:

(1) Workmen's Compensation insurance as defined in § 38.1-17. The rates for Workmen's Compensation Insurance shall remain subject to prior approval by the State Corporation Commission before they may be used in this State.

(2) Insurance on a specific risk as provided in § 38.1-236.1. The rates for such insurance shall remain subject to prior approval by the State Corporation Commission before they may be used in this State.

(3) Reinsurance, other than joint reinsurance to the extent stated in §38.1-232.1;

(4) Life insurance and annuities as defined in §§38.1-3 and 38.1-4;

(5) Accident and sickness insurance as defined in §38.1-5;

(6) Title insurance as defined in §38.1-20;

(7) Insurance of vessels or craft, their cargoes, marine builders' risks, marine protection and indemnity, or other risks commonly insured under marine insurance policies, as distinguished from inland marine insurance policies;

(8) Insurance against loss of or damage to hulls of aircraft, including their accessories and equipment, or against liability (other than workmen's compensation and employers' liability) arising out of the ownership, maintenance or use of aircraft; or

(9) Automobile bodily injury and property damage liability insurance issued to: (a) any motor carrier of property required by §56-299 or any amendment thereto, to file such insurance with the State Corporation Commission; or (b) any petroleum tank truck carrier required by any rule or regulation of the State Corporation Commission under §56-338.36 to file such insurance with the State Corporation Commission; or (c) any motor carrier of property required by 49 U.S.C.A. §315, or any rule or regulation prescribed by the Interstate Commerce Commission pursuant thereto, to file such insurance with the Interstate Commerce Commission.

(c) Insurers to which chapter does not apply:

The provisions of this chapter shall not apply to insurance of any kind when written by any mutual assessment fire insurance company organized and operating under the laws of the State and doing business only in this State, or by any mutual insurance company or association organized under the laws of this State, conducting business only in this State, and issuing only policies providing for perpetual insurance.

§38.1-221.1. EXEMPTIONS.—

The Commission may be rule exempt any person or class of persons or any market segment from any or all of the provisions of this chapter, if and to the extent that it finds their application unnecessary to achieve the purposes of this act.

§38.1-222.1. RATE STANDARDS.—

The following standards shall apply to the making and use of rates pertaining to all classes of insurance to which the provisions of this Chapter are applicable:

(a) Rates shall not be excessive, inadequate, or unfairly discriminatory.

(b) In determining whether rates comply with standards under subsection (a) due consideration shall be given to past and prospective loss experience within and outside this State, to conflagration or catastrophe hazards, to a reasonable margin for underwriting profit and contingencies, to dividends, savings or unabsorbed premium deposits allowed or returned by insurers to their policyholders or members or subscribers to past and prospective expenses both countrywide and those specially applicable to this State, to investment income earned or realized by insurers both from their unearned premium and loss reserve funds and to all relevant factors within and outside this State; and in the case of fire insurance rates consideration shall be given to the experience of the fire insurance business during a period of not less than the most recent five-year period for which such experience is available, and in the case of motor vehicle insurance as defined in §38.1-21, consideration shall be given to all sums distributed by the State Corporation Commission from the Uninsured Motorists Fund in accordance with the provisions of §§12-65 and 12-66 to the companies writing motor vehicle bodily injury liability and property damage liability insurance on motor vehicles registered in the State;

(c) As to the kinds of insurance to which this chapter applies, including insurance against contingent, consequential and indirect losses as defined in §38.1-23 (A) the systems of expense provisions included in the rates for use by any insurer or group of insurers may differ from those of other insurers or groups of insurers to reflect the requirements of the operating methods of any such insurer or group with respect to any kind of insurance, or with respect to any subdivision or combination thereof for which subdivision or combination separate expense provisions are applicable, and (B) risks may be grouped by classifications for the establishment of rates and minimum premiums. Classification rates may be modified to produce rates for individual risks in accordance with rating plans which establish standards for measuring variations in hazards or expense provisions, or both. Such standards may measure any difference among risks that can be demonstrated to have a probable effect upon losses or expenses.

§38.1-223.1. FILING OF RATES.—

Every authorized insurer and every rate service organization licensed under §38.1-230.1 which has been designated by any insurer for the filing of rates under §38.1-225.1 shall file with the Commission all rates and supplementary rate information and all changes and amendments thereof made by it for use in this State before they become effective.

§38.1-224.1. FILINGS OPEN TO INSPECTION.—

Each filing and any supporting information filed under this chapter shall, as soon as filed, be open to public inspection. Copies may be obtained by any person on request and upon payment of a reasonable charge therefor.

§38.1-225.1. DELEGATION OF RATE MAKING AND RATE FILING OBLIGATION.—

(1) RATE MAKING. An insurer may itself establish rates and supplementary rate information for any market segment based on the factors in §38.1-222.1 or it may use rates and supplementary rate information prepared

by a rate service organization, with average loss factors or expense factors determined by the rate service organization or with such modification for its own expense and loss experience as the credibility of that experience allows.

(2) RATE FILINGS. An insurer may discharge its obligation under §38.1-223.1 by giving notice to the Commission that it uses rates and supplementary rate information prepared by a designated rate service organization with such information about modifications thereof as are necessary fully to inform the Commission. The insured's rates and supplementary rate information shall be those filed from time to time by the rate service organization, including any amendments thereto as filed, subject, however, to the modifications filed by the insurer.

§38.1-226.1. REVIEW OF RATES BY COMMISSION.—The Commission may investigate and determine, either upon its own motion or at the request of any citizen of this State, or at the request of any insurer subject to the provisions of this chapter, whether or not rates in this State for the kinds of insurance to which the provisions of this chapter apply are excessive or inadequate or unfairly discriminatory. In any such investigation and determination the Commission shall give due consideration to those factors specified in §38.1-222.1.

§38.1-227.1. DISAPPROVAL OF RATES.—

(1) ORDER IN EVENT OF VIOLATION. If the Commission finds after a hearing that a rate is not in compliance with §38.1-222.1, it shall order that its use be discontinued for any policy issued or renewed after a date specified in the order and such order may provide for premium adjustment.

(2) TIMING OF ORDER. The order under subsection (1) shall be issued within 30 days after the close of the hearing or within such reasonable time extension as the Commission may fix.

(3) APPROVAL OF SUBSTITUTED RATE. Within one year after the effective date of an order under subsection (1), no rate promulgated to replace one disapproved under subsection (1) may be used until it has been filed with the Commission and not disapproved within 30 days thereafter.

(4) INTERIM RATES. Whenever an insurer has no legally effective rates as a result of the Commission's disapproval of rates or other act, the Commission shall on insurer's request specify interim rates for the insurer that are high enough to protect the interests of all parties and may order that a specified portion of the premiums be placed in an escrow account approved by it. When new rates become legally effective, the Commission shall order the escrowed funds or any overcharge in the interim rates to be distributed appropriately, except that refunds to policyholders that are de minimis shall not be required.

§38.1-228.1. SPECIAL RESTRICTIONS ON INDIVIDUAL INSURERS.—

The Commission may by order require that a particular insurer file any or all of its rates and supplementary rate information 30 days prior to their effective date, if and to the extent that it finds, after a hearing, that the protection of the interests of its insureds and the public in this State requires closer supervision of its rates because of the insurer's financial condition or repetitive filing of rates which are not in compliance with § 38.1-222.1. The Commission may extend the waiting period for any filing for not to exceed 30 additional days by written notice to the insurer before the first 30 day period expires. Such a filing shall be approved or disapproved during such waiting period and if not disapproved before the expiration of the waiting period shall be deemed to meet the requirements of this chapter, subject to the possibility of

subsequent disapproval under § 38.1-227.1. Any insurer affected hereby may request a rehearing by the Commission after the expiration of twelve months from the date of the Commission's former order.

§38.1-229.1. DELAYED EFFECT OF RATES.—

(1) RULE INSTITUTING DELAYED EFFECT. If the Commission finds that competition is not an effective regulator of the rates charged or that a substantial number of companies are competing irresponsibly through the rates charged, or that there are widespread violations of this chapter, in any kind or line of insurance or subdivision thereof or in any rating class or rating territory, it may promulgate a rule requiring that in the kind of line of insurance or subdivision thereof, or rating class or rating territory comprehended by the finding, any subsequent changes in the rates or supplementary rate information be filed with it at least 30 days before they become effective. The Commission may extend the waiting period for not to exceed 30 additional days by written notice to the filer before the first 30 day period expires.

(a) SUPPORTING DATA. By such rule, the Commission may require the filing of supporting data as to any or all kinds or lines of insurance or subdivisions thereof or classes of risks or combinations thereof as it deems necessary for the proper functioning of the rate monitoring and regulating process. The supporting data shall include:

(i) The experience and judgment of the filer, and, to the extent the filer wishes or the Commission requires, of other insurers or rate service organizations;

(ii) The filer's interpretation of any statistical data relied upon;

(iii) Descriptions of the actuarial and statistical methods employed in setting the rates; and

(iv) Any other relevant matters required by the Commission.

(b) EXPIRATION OF RULE. A rule promulgated under this section shall expire no more than one year after issue. The Commission may renew it after a hearing and appropriate findings under this section.

(c) SUPPORTING INFORMATION. Whenever a filing is not accompanied by such information as the Commission has required under subsection (a), the Commission may so inform the insurer and the filing shall be deemed to be made when the information is furnished.

§38.1-230.1. OPERATION AND CONTROL OF RATE SERVICE ORGANIZATIONS.—

(1) LICENSE REQUIRED. No rate service organization shall provide any service relating to the rates of any insurance subject to this chapter, and no insurer shall utilize the service of such organization for such purposes unless the organization has obtained a license under §38.1-231.1.

(2) AVAILABILITY OF SERVICES. No rate service organization shall refuse to supply any services for which it is licensed in this State to any insurer authorized to do business in this State and offering to pay the fair and usual compensation for the services.

(3) EXAMINATION OF POLICIES OR OTHER EVIDENCES OF INSURANCE. Any rate service organization subject to the provisions of this Chapter, as the kinds of insurance for which it files rates pursuant to §38.1-225.1, may provide for the examination of policies, daily reports, binders, renewal certificates, endorsements or other evidences of insurance, or the

cancellation thereof, and may make reasonable rules governing their submission and the correction of any errors or omissions therein. Such rules shall contain a provision that in the event any insurer does not within sixty days furnish satisfactory evidence to the rate service organization of the correction of any error or omission, previously called to the attention of such insurer by the rate service organization, it shall be the duty of the rate service organization to notify the Commission thereof. All information so submitted for examination shall be confidential but shall be available to the Commission upon its request.

§38.1-231.1. LICENSING.—

(1) APPLICATION. A rate service organization applying for a license as required by §38.1-230.1 shall include with its application:

(a) A copy of its constitution, charter, articles of organization, agreement, association or incorporation, and a copy of its by-laws, plan of operation and any other rules or regulations governing the conduct of its business;

(b) A list of its members and subscribers;

(c) The name and address of one or more residents of this State upon whom notices, process affecting it or orders of the Commission may be served;

(d) A statement showing its technical qualifications for acting in the capacity for which it seeks a license; and

(e) Any other relevant information and documents that the Commission may require.

(2) CHANGE OF CIRCUMSTANCES. Every organization which has applied for a license under subsection (1) shall thereafter promptly notify the Commission of every material change in the facts or in the documents on which its application was based.

(3) GRANTING OF LICENSE. If the Commission find that the applicant and the natural persons through whom it acts are competent, trustworthy, and technically qualified to provide the services proposed, and that all requirements of law are met, the Commission shall issue a license specifying the authorized activity of the applicant.

(4) DURATION. Licenses issued pursuant to this section shall remain in effect until the licensee withdraws from the State or until the license is suspended or revoked.

(5) AMENDMENTS TO CONSTITUTION AND BY-LAWS. Any amendment to a document filed under subsection (1) (a) shall be filed promptly after it becomes effective. Failure to comply with this subsection shall be a ground for revocation of the license granted under subsection (3).

§38.1-232.1. JOINT UNDERWRITING OR JOINT REINSURANCE ORGANIZATIONS.—

Every group, association or other organization of insurers which engages in joint underwriting or joint reinsurance through such group, association or organization or by standing agreement among the members thereof shall file with the Commission (a) a copy of its constitution, its articles of incorporation, agreement or association, and of its by-laws, rules and regulations governing its activities, all duly certified by the custodian of the originals thereof, (b) a list of its members, and (c) the name and address of a resident of this State upon whom notices or orders of the Commission or process may be served.

Every such group, association or other organization shall notify the Commission promptly of every change in its constitution, its articles of incorporation, agreement or association, and of its by-laws, rules and

regulations governing the conduct of its business; its list of members; and the name and address of the resident of this State designated by it upon whom notices or orders of the Commission or process affecting such group, association or organization may be served.

Every group, association or other organization of insurers which engages in joint underwriting as to a kind of insurance to which this chapter applies shall be subject to regulation with respect thereto as provided in this chapter. Every such organization of insurers which engages in joint reinsurance as to a kind of insurance to which this chapter applies shall be subject to the provisions of §§38.1-242.1, 38.1-243.1 and 38.1-244.1.

If, after a hearing, the Commission finds that any activity or practice of any such group, association or other organization is unfair or unreasonable or otherwise inconsistent with the provisions of this chapter, it may issue a written order specifying in what respect such activity or practice is unfair or unreasonable or otherwise inconsistent with the provisions of this chapter, and requiring the discontinuance of such activity or practice.

§38.1-233.1. BINDING AGREEMENTS BY INSURERS.—

No insurer shall assume any obligation to any person other than a policyholder or other insurers which with it are under common control or management or are members of a joint underwriting organization subject to the provisions of §38.1-232.1, to use or adhere to certain rates or rules, and no other person shall impose any penalty or other adverse consequence for failure of an insurer to adhere to certain rates or rules.

§38.1-234.1. AGREEMENTS FOR EQUITABLE APPORTIONMENT OF INSURANCE.—

Nothing in this chapter shall prohibit the making of agreements among insurers with respect to the equitable apportionment among them of insurance which may be afforded applicants who are in good faith entitled to but who are unable to procure such insurance through ordinary methods and such insurers may agree among themselves on the use of reasonable rate modifications for such insurance, such agreements and rate modifications to be subject to the approval of the Commission.

§38.1-235.1. COLLECTION OF EXPERIENCE DATA; UNIFORMITY; *COMPILATIONS—AVAILABLE TO INSURERS AND RATING ORGANIZATIONS.*

The Commission shall promulgate reasonable rules and statistical plans, reasonably adapted to each of the rating systems on file with it, which may be modified from time to time and which shall be used thereafter by each insurer in the recording and reporting of its loss and countrywide expense experience, in order that the experience of all insurers may be made available at least annually, in such form and detail as may be necessary to aid the Commission in determining whether rating systems comply with the standards set forth in §38.1-222.1. Such rules and plans may also provide for the recording and reporting of expense experience items which are specially applicable to this State and are not susceptible of determination by a prorating of countrywide experience. In promulgating such rules and plans the Commission shall give due consideration to the rating systems on file with it, and, in order that such rules and plans may be as uniform as is practicable among the several states, to the rules and to the form of the plans used for such rating systems in other states. No insurer shall be required to record or report its loss experience on a classification basis that is inconsistent with the rating system filed by it or on its behalf. The Commission may designate one or more rating organizations or other agencies to assist it in gathering such experience and

making compilations thereof, and such compilations shall be made available, subject to reasonable rules promulgated by the Commission, to insurers and rating organizations.

§38.1-236.1. EXCESS RATE AS TO SPECIFIC RISK.—

Upon written application of an insurer stating its reasons therefor, accompanied by the written consent of the insured or prospective insured, filed with and approved by the Commission, a rate in excess of that provided by a filing otherwise applicable may be used as to any specific risk.

§38.1-237.1. CONTRACT OR POLICY TO ACCORD WITH FILINGS.—

No insurer shall make or issue a contract or policy of insurance of the kind to which the provisions of this chapter apply, except in accordance with the filings which are in effect for such insurer as provided for in this chapter.

§38.1-238.1. NO RULE PROHIBITING OR REGULATING PAYMENT OF DIVIDENDS, ETC., TO BE ADOPTED.—

No rating organization subject to the provisions of this chapter shall adopt any rule the effect of which would be to prohibit or regulate the payment of dividends, savings or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members or subscribers.

§38.1-239.1. PERSON AGGRIEVED BY APPLICATION OF RATING SYSTEM TO BE HEARD; APPEAL TO COMMISSION.—

Every rate service organization and every insurer subject to the provisions of this chapter which makes its own rates, shall provide within this State reasonable means whereby any person aggrieved by the application of its rating system may be heard in person or by his authorized representative on his written request to review the manner in which such rating system has been applied in connection with the insurance afforded him. If the rate service organization or insurer fails to grant or reject such request within thirty days after it is made, the applicant may proceed in the same manner as if his application had been rejected. Any party affected by the action of such rate service organization or such insurer on such request may, within thirty days after written notice of such action, appeal to the Commission, which after a hearing held upon not less than ten days' written notice to the applicant and to such rating organization or insurer, may affirm or reverse such action.

§38.1-240.1. COOPERATION AMONG RATING ORGANIZATIONS, OR AMONG SUCH ORGANIZATIONS AND INSURERS, AUTHORIZED; REVIEW BY COMMISSION.—

Cooperation among rating organizations or among rate service organizations and insurers in rate making or in other matters within the scope of this chapter is hereby authorized, provided the filings resulting from such cooperation are subject to all the provisions of this chapter which are applicable to filings generally. The Commission may review such cooperative activities and practices, and if, after a hearing, it finds that any such activity or practice is unfair or unreasonable or otherwise inconsistent with the provisions of this chapter, it may issue a written order specifying in what respects such activity or practice is unfair or unreasonable or otherwise inconsistent with the provisions of this chapter, and requiring the discontinuance of such activity or practice.

§38.1-241.1. EXAMINATION OF RATE SERVICE ORGANIZATIONS AND OF JOINT UNDERWRITING AND JOINT REINSURANCE ORGANIZATIONS.—

(1) POWER TO EXAMINE.

(a) Rate service organizations and joint underwriting and joint reinsurance organizations. Whenever it deems it necessary in order to inform itself about any matter related to the enforcement of the insurance laws, the Commission may examine the affairs and condition of any rate service organization under §38.1-230.1 (1) and of any joint underwriting or joint reinsurance organization under §38.1-232.1.

(b) Collateral examinations. So far as reasonably necessary for any examination under paragraph (a), the Commission may examine the accounts, records, documents or evidences of transactions, so far as they relate to the examinee, of any officer, manager, general agent, employee, person who has executive authority over or is in charge of any segment of the examinee's affairs, person controlling or having a contract under which he has the right to control the examinee whether exclusively or with others, person who is under the control of the examinee, or any person who is under the control of a person who controls or has a right to control the examinee whether exclusively or with others.

(c) Availability of records. On demand every examinee under paragraph (a) shall make available to the Commission for examination any of its own accounts, records, documents or evidences of transactions and any of those of the persons listed in paragraph (b).

(2) DUTY TO EXAMINE. The Commission shall examine every licensed rate service organization at intervals to be established by rule.

(3) AUDITS OR ACTUARIAL EVALUATIONS. In lieu of all or part of an examination under subsections (1) and (2), or in addition to it, the Commission may order an independent audit by certified public accountants or actuarial evaluation by actuaries approved by it of any person subject to the examination requirement. Any accountant or actuary selected shall be subject to rules respecting conflicts of interest promulgated by the Commission. Any audit or evaluation under this subsection shall be subject to subsections (6) to (13), so far as appropriate.

(4) ALTERNATIVES TO EXAMINATION. In lieu of all or part of an examination under this section, the Commission may accept the report of an audit already made by certified public accountants or actuarial evaluation by actuaries approved by it, or the report of an examination made by the insurance department of another state.

(5) PURPOSE AND SCOPE OF EXAMINATION. An examination may but need not cover comprehensively all aspects of the examinee's affairs and condition. The Commission shall determine the exact nature and scope of each examination, and in doing so shall take into account all relevant factors, including but not limited to the length of time the examinee has been operating, the length of time he has been licensed in this State, the nature of the services provided, the nature of the accounting records available and the nature of examinations performed elsewhere.

(6) ORDER OF EXAMINATION. For each examination under this section, the Commission shall issue an order stating the scope of the examination and designating the examiner in charge. Upon demand a copy of the order shall be exhibited to the examinee.

(7) ACCESS TO EXAMINEE. Any examiner authorized by the Commission shall, so far as necessary to the purposes of the examination, have access at all reasonable hours to the premises and to any books, records, files, securities, documents of property of the examinee and to those of persons under subsection (1) (b) so far as they relate to the affairs of the examinee.

(8) COOPERATION. The officers, employees and agents of the examinee, and of persons under subsection (1) (b) shall comply with every reasonable request of the examiners for assistance in any matter relating to the examination. No person shall obstruct or interfere with the examination in any way other than by legal process.

(9) CORRECTION OF BOOKS. If the Commission finds the accounts or records to be inadequate for proper examination of the condition and affairs of the examinee or improperly kept or posted, it may employ experts to rewrite, post or balance them at the expense of the examinee.

(10) REPORT ON EXAMINATION. The examiner in charge of an examination shall make a proposed report of the examination which shall include such information and analysis as is ordered in subsection (6), together with the examiner's recommendations. Preparation of the proposed report may include conferences with the examinee or his representatives at the option of the examiner in charge. The proposed report shall remain confidential until filed under subsection (11).

(11) ADOPTION AND FILING OF EXAMINATION REPORT. The Commission shall serve a copy of the proposed report upon the examinee. Within twenty days after service, the examinee may serve upon the Commission a written demand for a hearing on the contents of the report. If a hearing is demanded, the Commission shall give notice and hold a hearing, except that on demand by the examinee the hearing shall be informal and private. Within sixty days after the hearing or if no hearing is demanded then within sixty days after the last day on which the examinee might have demanded a hearing the Commission shall adopt the report with any necessary modifications and file it for public inspection, or it may order a new examination.

(12) COPY FOR EXAMINEE. The Commission shall forward a copy of the examination report to the examinee immediately upon adoption, except that if the proposed report is adopted without change, the Commission need only so notify the examinee.

(13) COPIES FOR BOARD. The examinee shall forthwith furnish copies of the adopted report to each member of its board of directors or other governing board.

(14) COPIES FOR OTHER PERSONS. The Commission may furnish, without cost or at a price to be determined by it, a copy of the adopted report to the insurance commissioner of each state in the United States and of each foreign jurisdiction in which the examinee is licensed and to any other interested person in this State or elsewhere.

(15) REPORT AS EVIDENCE. In any proceeding by or against the examinee or any officer or agent thereof the examination report as adopted by the Commission shall be admissible as evidence of the facts stated therein. In any proceeding by or against the examinee, the facts asserted in any report properly admitted in evidence shall be presumed to be true in the absence of contrary evidence.

(16) COSTS TO BE PAID BY EXAMINEE. The reasonable costs of an examination under this section shall be paid by the examinee except as provided in subsection (19). The costs shall include the salary and expenses of each examiner and any other expenses which may be directly apportioned to the examination.

(17) DUTY TO PAY. The amount payable under subsection (16) shall become due 10 days after the examinee has been served a detailed account of the costs.

(18) DEPOSIT. The Commission may require any examinee, before or from time to time during an examination to deposit with the State Treasurer such deposits as the Commission deems necessary to pay the cost of the examination. Any deposit and any payment made under subsections (16) and (17) shall be credited to the special fund of the Bureau of Insurance.

(19) EXEMPTIONS. On the examinee's request or on his own motion, the Commission may pay all or part of the costs of an examination whenever it finds that because of the frequency of examinations or other factors, imposition of the costs would place an unreasonable burden on the examinee. The Commission shall include in its annual report information about any instance in which it applied this subsection.

(20) RETALIATION. Deposits and payments under subsections (16) to (19) shall not be deemed to be a tax or license fee within the meaning of any statute. If any other state charges a per diem fee for examination of examinees domiciled in this State, any examinee domiciled in that other state shall be required to pay the same fee when examined by the Bureau of Insurance.

§38.1-242.1. ACTION OF COMMISSION UPON REQUEST FOR HEARING ON ORDER OR DECISION MADE WITHOUT A HEARING.—

Any person, organization or insurer aggrieved by an order or a decision of the Commission made without a hearing may, within thirty days after notice of such order or decision, make written request to the Commission for a hearing thereon. Within a reasonable time thereafter the Commission, after having given not less than ten days' written notice of the time and place of hearing, shall hear such party or parties. Within a reasonable time after such hearing the Commission shall affirm, reverse or modify its previous action, specifying its reasons therefor. Pending such hearing and decision thereon the Commission may suspend or postpone the effective date of the order or decision to which the hearing relates.

§38.1-243.1. WITHHOLDING INFORMATION; GIVING FALSE OR MISLEADING INFORMATION.—

No person or organization shall willfully withhold information from, or knowingly give false or misleading information to, the Commission, any statistical agency designated by the Commission, any rating organization or any insurer, which will affect the rates or premiums chargeable under the provisions of this chapter. A violation of this section shall subject the one guilty of such violation to the penalties provided in §38.1-244.1.

§38.1-244.1. PENALTIES FOR VIOLATION OF CHAPTER; POWERS OF COMMISSION; SUSPENSION OR REVOCATION OF LICENSE.—

Any person, organization or insurer found to be guilty of a violation of any provision of this chapter shall be subject to a fine of not less than ten dollars nor more than one thousand dollars for each such violation. The Commission shall have the right to suspend or revoke or refuse to renew the license of any person, organization or insurer for violation of any of the provisions of this chapter.

The Commission may impose a fine of not less than ten dollars nor more than one thousand dollars upon or may suspend or revoke or refuse to renew the license of, any person, organization or insurer which fails to comply with an order of the Commission within the time limited by such order, or any extension thereof which the Commission may grant.

The Commission may determine when a suspension or revocation of license shall become effective, and the suspension or revocation shall remain in effect for the period fixed by it unless the Commission modifies or rescinds such suspension or revocation, or until the order upon which such suspension or revocation is based is modified or reversed as the result of an appeal therefrom.

No fine shall be imposed and no license shall be suspended or revoked by the Commission except upon written order stating its findings, made after a hearing held upon not less than ten days' written notice to such person, organization, or insurer specifying the alleged violation.

§38.1-245.1. APPEAL FROM FINAL ORDER OR DECISION OF COMMISSION.—

The provisions of §12-63 shall apply to appeals to the Supreme Court of Appeals of Virginia from any final order or decision of the Commission with respect to any matter coming within the purview of this chapter.

2. That Chapter 6 of Title 38.1 consisting of §§ 38.1-218 through 38.1-279 is repealed.

A BILL

To amend and reenact § 18.1-56.1 of the Code of Virginia relating to driving a motor vehicle while ability to drive impaired by alcohol.

Be it enacted by the General Assembly of Virginia:

1. That § 18.1-56.1 of the Code of Virginia be amended and reenacted, as follows:

§ 18.1-56.1. Driving automobile, engine, etc., while ability to drive is impaired by alcohol.—It shall be unlawful for any person to drive or operate any automobile or other motor vehicle, car, truck, engine or train while such person's ability to drive or operate such vehicle is impaired by the presence of alcohol in his blood. A person's ability to drive or operate such a vehicle shall be deemed to be impaired by the presence of alcohol in his blood within the meaning of this section when such person has so indulged in alcoholic intoxicants as to lack the clearness of intellect and control of himself which he would otherwise possess.

In every prosecution under § 18.1-54 of this Code or any similar ordinance of any county, city or town the offense with which the accused is charged shall be deemed to include the offense punishable under this section; and whenever in any such prosecution it appears that the amount of alcohol in the blood of the accused at the time of the alleged offense as indicated by a chemical analysis of the accused's blood in accordance with the provisions of § 18.1-55.1 is as much as ~~.10~~ *.05* but less than ~~.15~~ *0.10* percent by weight it shall be presumed that the ability of the accused was impaired within the meaning of this section. No person shall be arrested, prosecuted or convicted for violation of this section except as a lesser included offense of a prosecution for violation of § 18.1-54 or of any similar ordinance of any county, city or town.

Every person violating the provisions of this section shall be guilty of a misdemeanor and punished as provided in § 18.1-9 of this Code; provided, that in addition to such punishment, upon every such first conviction the judge shall suspend the right of the accused to operate any motor vehicle upon the highways of this State for a period of ~~six months~~ *not less than two months nor more than six months, in the discretion of the court or jury trying the case,* and upon any second or subsequent such conviction, within a period of five years such suspension shall be for a period of twelve months.

A BILL

To amend and reenact § 18.1-57, as amended, of the Code of Virginia, relating to presumptions from alcoholic content of blood.

Be it enacted by the General Assembly of Virginia:

1. That § 18.1-57, as amended, of the Code of Virginia be amended and reenacted, as follows:

§ **18.1-57. Presumptions from alcoholic content of blood.**—In any prosecution for a violation of § 18.1-54, or any similar ordinance of any county, city or town, the amount of alcohol in the blood of the accused at the time of the alleged offense as indicated by a chemical analysis of the accused's blood in accordance with the provisions of § 18.1-55.1, shall give rise to the following presumptions:

(1) If there was at that time 0.05 percent or less by weight *by volume* of alcohol in the accused's blood, it shall be presumed that the accused was not under the influence of alcoholic intoxicants;

(2) If there was at that time in excess of 0.05 percent but less than ~~0.15~~ *0.10* percent by weight *by volume* of alcohol in the accused's blood, such facts shall not give rise to any presumption that the accused was or was not under the influence of alcoholic intoxicants, but such facts may be considered with other competent evidence in determining the guilt or innocence of the accused; provided, however, such facts shall not preclude prosecution and conviction under § 18.1-56.1;

(3) If there was at that time ~~0.15~~ *0.10* percent or more by weight *by volume* of alcohol in the accused's blood, it shall be presumed that the accused was under the influence of alcoholic intoxicants.

A BILL

To amend and reenact § 18.1-55.1, as amended, of the Code of Virginia, relating to use of chemical tests to determine alcohol in blood.

Be it enacted by the General Assembly of Virginia:

1. That § 18.1-55.1, as amended, of the Code of Virginia be amended and reenacted as follows:

§ 18.1-55.1. Use of chemical test to determine alcohol in blood; procedure; qualifications and liability of person withdrawing blood; costs; evidence; suspension of license for refusal to submit to test; localities authorized to adopt parallel provisions.—(a) As used in this section "license" means any operator's, chauffeur's or learner's permit or license authorizing the operation of a motor vehicle upon the highways.

(b) Any person whether licensed by Virginia or not, who operates a motor vehicle upon a public highway in this State on and after ~~July~~ *January* one, nineteen hundred ~~sixty four~~ *seventy-three*, shall be deemed thereby, as a condition of such operation, to have consented to have a sample of his blood *or breath* taken for a chemical test to determine the alcoholic content ~~thereof~~ *of his blood*, if such person is arrested for a violation of § 18.1-54 or of a similar ordinance of any county, city or town within two hours of the alleged offense. *Any person so arrested shall elect to have either the breath or blood sample taken, but not both. It shall not be a matter of defense that the breath test is not available.*

(c) If a person after being arrested for a violation of § 18.1-54 or of a similar ordinance of any county, city or town and after having been advised by the arresting officer that a person who operates a motor vehicle upon a public highway in this State shall be deemed thereby, as a condition of such operation, to have consented to have a sample of his blood *or breath* taken for a chemical test to determine the alcoholic content ~~thereof~~ *of his blood*, and that the unreasonable refusal to do so constitute~~s grounds~~ for the revocation of the privilege of operating a motor vehicle upon the highways of this State, then refuses to permit the taking of a sample of his blood *or breath* for such tests, the arresting officer shall take the person arrested before a committing magistrate and if he does again so refuse after having been further advised by such magistrate of the law requiring a blood *or breath* test to be taken and the penalty for refusal, and so declares again his refusal in writing upon a form provided by the Chief Medical Examiner of Virginia (hereinafter referred to as Chief Medical Examiner), or refuses or fails to so declare in writing and such fact is certified as prescribed in paragraph (j), then no blood *or breath* sample shall be taken even though he may thereafter request same.

(d) Only a physician, registered professional nurse, graduate laboratory technician or a technician or nurse designated by order of a court of record acting upon the recommendation of a licensed physician, using soap and water to cleanse the part of the body from which the blood is taken and using instruments sterilized by the accepted steam sterilizer or some other sterilizer which will not affect the accuracy of the test, or using chemically clean sterile disposable syringes, shall withdraw blood for the purpose of determining the alcoholic content thereof. No civil liability shall attach to

any person authorized to withdraw blood as provided herein as a result of the act of withdrawing blood from any person submitting thereto, provided the blood was withdrawn according to recognized medical procedures; and provided further that the foregoing shall not relieve any such person from liability for negligence in the withdrawing of any blood sample.

(d1) Portions of the blood sample so withdrawn shall be placed in each of two vials provided by the Chief Medical Examiner, which vials shall be sealed and labeled by the person taking the sample or at his direction, showing on each the name of the accused, the name of the person taking the blood sample, and the date and time the blood sample was taken. The vials shall be placed in two containers provided by the Chief Medical Examiner, which containers shall be sealed so as not to allow tampering with the contents. The arresting or accompanying officer shall take possession of the two containers holding the vials as soon as the vials are placed in such containers and sealed, and shall transport or mail one of the vials forthwith to the Chief Medical Examiner. The officer taking possession of the other container (hereinafter referred to as second container) shall, immediately after taking possession of said second container give to the accused a form provided by the Chief Medical Examiner which shall set forth the procedure to obtain an independent analysis of the blood in the second container, and a list of those laboratories and their addresses, approved by the State Health Commissioner; such form shall contain a space for the accused or his counsel to direct the officer possessing such second container to forward that container to such approved laboratory for analysis, if desired. The officer having the second container, after delivery of the form referred to in the preceding sentence (unless at that time directed by the accused in writing on such form to forward the second container to an approved laboratory of the accused's choice, in which event the officer shall do so) shall deliver said second container to the chief police officer of the county, city or town in which the case will be heard, and the chief police officer who receives the same shall keep it in his possession for a period of seventy-two (72) hours, during which time the accused or his counsel may, in writing, on the form provided hereinabove, direct the chief police officer having possession of the second container to mail it to the laboratory of the accused's choice chosen from the approved list. As used in this section, the term "chief police officer" shall mean the sheriff in any county not having a chief of police, the chief of police of any county having a chief of police, the chief of police of the city or the sergeant or chief of police of the town in which the charge will be heard.

(d2) The testing of the contents of the second container shall be made in the same manner as hereafter set forth concerning the procedure to be followed by the Chief Medical Examiner, and all procedures established herein for transmittal, testing and admission of the result in the trial of the case shall be the same as for the sample sent to the Chief Medical Examiner.

(d3) A fee not to exceed $15.00 shall be allowed the approved laboratory for making the analysis of the second blood sample which fee shall be paid out of the appropriation for criminal charges. If the person whose blood sample was withdrawn is subsequently convicted for violation of § 18.1-54, or of a similar ordinance of any county, city or town, the fee charged by the laboratory for testing the blood sample shall be taxed as part of the costs of the criminal case and shall be paid into the general fund of the State treasury.

(d4) If the chief police officer having possession of the second container is not directed as herein provided to mail it within seventy-two (72) hours after receiving said container then said officer shall destroy same.

(e) Upon receipt of the blood sample forwarded to his office for analysis, the Chief Medical Examiner shall cause it to be examined for alcoholic content and he or an Assistant Chief Medical Examiner shall execute a certificate which shall indicate the name of the accused, the date, time and by whom the blood sample was received and examined, a statement that the container seal had not been broken or otherwise tampered with, a statement that the container was one provided by the Chief Medical Examiner and a statement of the alcoholic content of the sample. The certificate attached to the vial from which the blood sample examined was taken shall be returned to the clerk of the court in which the charge will be heard. The certificate attached to the container forwarded on behalf of the accused shall also be returned to the clerk of the court in which the charge will be heard, and such certificate shall be admissible in evidence when attested by the pathologist or by the supervisor of the laboratory approved by the State Health Commissioner.

(f) When any blood sample taken in accordance with the provisions of this section is forwarded for analysis to the office of the Chief Medical Examiner, a report of the results of such analysis shall be made and filed in that office. Upon proper identification of the vial into which the blood sample was placed, the certificate as provided for in this section shall, when duly attested by the Chief Medical Examiner, or any Assistant Chief Medical Examiner, be admissible in any court, in any criminal proceeding, as evidence of the facts therein stated and of the results of such analysis.

(g) Upon the request of the person whose blood *or breath* sample was taken for a chemical test to determine the alcoholic content ~~thereof~~ *of his blood*, the results of such test or tests shall be made available to him.

(h) A fee not exceeding ten dollars shall be allowed the person withdrawing a blood sample in accordance with this section, which fee shall be paid out of the appropriation for criminal charges. If the person whose blood sample was withdrawn is subsequently convicted for violation of § 18.1-54 or of a similar ordinance of any county, city or town, the amount charged by the person withdrawing the sample shall be taxed as part of the costs of the criminal case and shall be paid into the general fund of the State treasury.

(i) In any trial for a violation of § 18.1-54 of the Code or of a similar ordinance of any county, city or town, this section shall not otherwise limit the introduction of any relevant evidence bearing upon any question at issue before the court, and the court shall, regardless of the result of the blood *or breath* test or tests, if any, consider such other relevant evidence of the condition of the accused as shall be admissible in evidence. The failure of an accused to permit a sample of his blood *or breath* to be ~~withdrawn~~ *taken* for a chemical test to determine the alcoholic content ~~thereof~~ *of his blood* is not evidence and shall not be subject to comment at the trial of the case; nor shall the fact that a blood *or breath* test had been offered the accused be evidence or the subject of comment.

(j) The form referred to in paragraph (c) shall contain a brief statement of the law requiring the taking of a blood *or breath* sample and the penalty for refusal, a declaration of refusal and lines for the signature of the person from whom the blood *or breath* sample is sought, the date and the signature of a witness to the signing. If such person refuses or fails to execute such declaration, the committing justice, clerk or assistant clerk shall certify such fact, and that the committing justice, clerk or assistant clerk advised the person arrested that such refusal or failure, if found to be unreasonable, constitutes grounds for the revocation of such person's license to drive. The committing or issuing justice, clerk or assistant clerk shall forthwith issue a warrant charging the person refusing to take the test to determine the alcoholic content of his blood, with violation of this

section. The warrant shall be executed in the same manner as criminal warrants.

(k) The executed declaration of refusal or the certificate of the committing justice, as the case may be, shall be attached to the warrant and shall be forwarded by the committing justice, clerk or assistant clerk to the court in which the offense of driving under the influence of intoxicants shall be tried.

(l) When the court receives the declaration of refusal or certificate referred to in paragraph (k) together with the warrant charging the defendant with refusing to submit to having a sample of his blood *or breath* taken for the determination of the alcoholic content ~~thereof~~ *of his blood*, the court shall fix a date for the trial of said warrant, at such time as the court shall designate, but subsequent to the defendant's criminal trial for driving under the influence of intoxicants.

(m) The declaration of refusal or certificate under paragraph (k), as the case may be, shall be prima facie evidence that the defendant refused to submit to the taking of a sample of his blood *or breath* to determine the alcoholic content ~~thereof~~ *of his blood* as provided hereinabove. However, this shall not be deemed to prohibit the defendant from introducing on his behalf evidence of the basis for his refusal to submit to the taking of a sample of his blood *or breath* to determine the alcoholic content ~~thereof~~ *of his blood.* The court shall determine the reasonableness of such refusal.

(n) If the court shall find the defendant guilty as charged in the warrant, the court shall suspend the defendant's license for a period of 90 days for a first offense and for six months for a second or subsequent offense or refusal within one year of the first or other such refusals; the time shall be computed as follows: the date of the first offense and the date of the second or subsequent offense.

(o) The court shall forward the defendant's license to the Commissioner of the Division of Motor Vehicles of Virginia as in other cases of similar nature for suspension of license unless, however, the defendant shall appeal his conviction in which case the court shall return the license to the defendant upon his appeal being perfected.

(p) The procedure for appeal and trial shall be the same as provided by law for misdemeanors.

(q) No person arrested for a violation of § 18.1-54 or a similar ordinance of any county, city or town shall be required to execute in favor of any person or corporation a waiver or release of liability in connection with the withdrawal of blood and as a condition precedent to the withdrawal of blood as provided for herein.

(r) The court or the jury trying the case shall determine the innocence or the guilt of the defendant from all the evidence concerning his condition at the time of the alleged offense.

(r1) Chemical analysis of a person's breath, to be considered valid under the provisions of this section, shall have been performed with a type of equipment and according to methods approved by the State Health Commissioner. Except as hereinafter provided such test may be administered by any individual possessing a valid permit issued by the State Health Commissioner for this purpose. The State Health Commissioner is authorized to approve satisfactory techniques or methods, to ascertain the qualifications and competence of individuals to conduct such analyses, and to issue permits which shall be subject to termination or revocation at the discretion of the State Health Commissioner. The results of such tests shall be admissible in any court in any criminal proceeding as evidence of the facts therein stated when testified to by the person administering such test. In no case may the officer making or participating in the arrest of the accused make the breath test or analyze the results thereof.

(s) The steps herein set forth relating to the taking, handling, identification, and disposition of blood *or breath* samples are procedural in nature and not substantive. Substantial compliance therewith shall be deemed to be sufficient. Failure to comply with any one or more of such steps or portions thereof, or a variance in the results of the two blood tests shall not of itself be grounds for finding the defendant not guilty, but shall go to the weight of the evidence and shall be considered as set forth above with all the evidence in the case, provided that the defendant shall have the right to introduce evidence on his own behalf to show noncompliance with the aforesaid procedure or any part thereof, and that as a result his rights were prejudiced.

(t) The governing bodies of the several counties, cities and towns are authorized to adopt ordinances paralleling the provisions of (a) through (s) of this section.

A BILL

To amend and reenact § 18.1-59, as amended, of the Code of Virginia, relating to the revocation of driver's license for driving while under the influence of alcohol.

Be it enacted by the General Assembly of Virginia:

1. That § 18.1-59, as amended, of the Code of Virginia be amended and reenacted, as follows:

§ 18.1-59. Same; forfeiture of driver's license; suspension of sentence.—The judgment of conviction, or finding of not innocent in the case of a juvenile, if for a first offense under § 18.1-54, or for a similar offense under any county, city or town ordinance, ~~shall of itself operate to deprive the person so convicted or found not innocent of~~ the right *of the person so convicted or found not innocent* to drive or operate any such vehicle, conveyance, engine or train in this State *shall be suspended* for a period of ~~one year~~ *not less than six months nor more than twelve months, in the discretion of the court or jury trying the case,* from the date of such judgment, and if for a second or other subsequent offense within ten years thereof for a period of three years from the date of the judgment of conviction or finding of not innocent thereof, any such period in either case to run consecutively with any period of suspension for failure to permit a blood sample to be taken as required by § 18.1-55.1. If any person has heretofore been convicted or found not innocent of violating any similar act of this State and thereafter is convicted or found not innocent of violating the provisions of § 18.1-54, such conviction or finding shall for the purpose of this section and § 18.1-58 be a subsequent offense and shall be punished accordingly; and the court may, in its discretion, suspend the sentence during the good behavior of the person convicted or found not innocent.

A BILL

To amend and reenact § 46.1-281 of the Code of Virginia relating to requirements for parking.

Be it enacted by the General Assembly of Virginia:

1. That § 46.1-281 of the Code of Virginia be amended and reenacted as follows:

§ 46.1-281. Requirements for parking.—No person having control or charge of a motor vehicle shall allow such vehicle to stand on any highway unattended without first effectively setting the hand brake thereon, stopping the motor, *removing the key, and when standing upon any grade,* turning the front wheels into the curb or side of the highway. *The maximum penalty imposed for failing to remove the key shall not exceed a fine of twenty-five dollars. Violations of this section shall have no effect on the insurance coverages provided for such motor vehicle.*

A BILL

To amend and reenact § 38.1-381.5 of the Code of Virginia pertaining to regulation of the cancellation of or refusal to renew policies or contracts of automobile insurance; and imposing powers and duties upon the Commissioner of Insurance to regulate insurers and review such cancellations or refusals to renew.

Be it enacted by the General Assembly of Virginia:

1. That § 38.1-381.5 of the Code of Virginia be amended and reenacted, as follows:

§ 38.1-381.5. Grounds and procedure for cancellation of or refusal to renew motor vehicle insurance policies; review by Insurance Commissioner.—(a) As used in this section the following definitions shall apply:

(1) *"Policy of automobile insurance"* or *"policy"* means a policy or contract for bodily injury or property damage liability insurance delivered or issued for delivery in this State covering liability arising from the ownership, maintenance or use of any motor vehicle, insuring as the named insured one individual or husband and wife residents of the same household, and under which the insured vehicle therein designated is ~~of the following type only:~~ *either*

(i) A motor vehicle of a private ~~capacity;~~ *passenger* or station wagon type that is not used as a public or livery conveyance (which terms shall not be construed to include car pools) nor rented to others~~;~~, or

(ii) Any other four wheel motor vehicle with a load capacity of 1500 pounds or less which is not used in the occupation, profession or business *(other than farming)* of the insured, ~~nor is used~~ *or* as a public or livery conveyance ~~nor~~ *or* rented to others~~; provided, however, that this section shall not apply~~. *The term "policy of automobile insurance" or "policy" as used in this section shall not include* (a) ~~to~~ any policy issued ~~under the Automobile Insurance Rating Plan~~ *through the Virginia Automobile Insurance Plan,* or (b) ~~to~~ any policy insuring more than four motor vehicles, or (c) ~~to~~ any policy covering the operation of a garage, sales agency, repair shop, service station, or public parking place, or (d) ~~to~~ any policy providing insurance only on an excess basis, or (e) ~~to~~ any other contract providing insurance to such named insured even though such contract may incidentally provide insurance with respect to such motor vehicles.

(2) *"Renewal"* or *"to renew"* means the issuance and delivery by an insurer of a policy superseding at the end of the policy period a policy previously issued and delivered by the same insurer, such renewal policy *being written in the same rating program* ~~to provide~~ *and providing* types and limits of coverage at least equal to those contained in the policy being superseded, or the issuance and delivery of a certificate or notice extending the term of a policy beyond its policy period or term with types and limits of coverage at least equal ~~to those contained in~~, *and written in the same rating program as,* the policy being extended; provided, however, that any policy with a policy period or term of less than twelve months or any ~~period~~ *policy* with no fixed expiration date shall for the purpose of this section be considered as if written for successive policy periods or terms of six months *from the original effective date.*

(2a) "Cancellation" or "to cancel" means a termination of a policy during the policy period.

(3) *"Insurer"* means any insurance company, association or exchange authorized to transact the business of automobile insurance in the Commonwealth of Virginia.

(b) This section shall apply only to that portion of a policy of automobile insurance providing bodily injury and property damage liability, and uninsured motorists coverage.

(c) No insurer shall cancel or refuse to renew a policy of automobile insurance solely because of the age, sex, residence, race, color, creed, national origin, ancestry, marital status or lawful occupation (including the military service) of anyone who is insured. But nothing contained herein shall require any insurer to renew a policy for an insured where the insured's occupation has changed so as to materially increase the risk.

(d) No insurer shall cancel a policy except for one or more of the following specified reasons:

(1) ~~The policy was obtained through material misrepresentation;~~

(2) ~~The insured has violated any of the material terms or conditions of the policy;~~

(3) The named insured or any other operator who either resides in the same household or customarily operates ~~an automobile~~ *a motor vehicle* insured under such policy has had his driver's license suspended or revoked after the effective date of the policy if said policy ~~(i) had~~ *has* been in effect less than one year or ~~after~~ *within ninety days prior to* the last anniversary of the effective date if the policy ~~had~~ *has* been in effect longer than one year. ~~or (ii) is or becomes subject to any physical or mental condition which impairs his ability to operate a motor vehicle~~.

(4) ~~The named insured or any other operator who either resides in the same household or customarily operates an automobile insured under such policy is convicted of, pleads nolo contendere or forfeits bail during the policy period for any of the following: (i) any felony involving the use of a motor vehicle, (ii) homicide, arising out of the operation of a motor vehicle, (iii) operating a motor vehicle while under the influence of intoxicating liquor or of any narcotic drug, (iv) leaving the scene of a motor vehicle accident in which the insured is involved without identification as required by law, (v) theft of a motor vehicle or the unlawful taking of a motor vehicle, (vi) making false statements in an application for a motor vehicle operator's license, (vii) a third moving traffic violation, committed within a twenty four month period any part of which falls within the policy period, whether or not the violations were repetitions of the same offense or were different offenses~~.

(5) ~~The insured automobile is (i) subject to an inspection law and has not been inspected or if inspected has failed to qualify or (ii) used in carrying passengers for hire or compensation, provided, however, that the use of an automobile for a car pool shall not be considered use of an automobile for hire or compensation~~.

(6) The named insured fails to discharge when due any of his obligations in connection with the payment of premium for the policy or any installment thereof, whether payable to the company or its agent either directly or indirectly under any premium finance plan or extension of credit.

(7) ~~The insured, within a twenty-four-month period, any part of which falls~~

~~within the policy period, has been involved in four or more automobile accidents where there is evidence of or the circumstances indicate fault on the part of the insured.~~

(e) No cancellation or refusal to renew by an insurer of a policy of automobile insurance shall be effective unless the insurer shall deliver or mail, to the named insured at the address shown in the policy, a written notice of the cancellation or refusal to renew. Such notice shall:

(1) Be approved as to form by the ~~Insurance Commissioner~~ *Commissioner of Insurance* prior to *its* use;

(2) State the date, *which shall* not *be* less than thirty days after mailing to the insured of the notice of cancellation or notice of ~~intention not~~ *refusal* to renew, on which such cancellation or refusal to renew shall become effective, except that such effective date may be *not less than* fifteen days from the date of mailing or delivery when ~~it~~ *the policy* is being cancelled or not renewed for the ~~reasons~~ *reason* set forth in clause (6) of paragraph (d);

(3) State the specific reason or reasons of the insurer for cancellation or refusal to renew; ~~or be accompanied by a statement that upon written request of the named insured, mailed or delivered to the insurer not less than ten days prior to the effective date of cancellation or refusal to renew, the insurer will specify the reason or reasons for such cancellation, the insurer to supply such information within five days of receipt by it of such request;~~

(4) Advise the insured of his right to request in writing, within ten days of the receipt of the notice, that the ~~Insurance Commissioner~~ *Commissioner of Insurance* review the action of the insurer;

(5) ~~Either in the notice or in an accompanying statement advise~~. *A*dvise his possible eligibility for insurance through the ~~Automobile Insurance Rating Plan.~~ *Virginia Automobile Insurance Plan.*

Nothing in paragraph (e) shall prohibit any insurer from including in the notice of cancellation or refusal to renew any additional disclosure statements required by State or federal laws.

(f) Nothing in this section shall apply:

(1) If the insurer *or its agent acting on behalf of the insurer* has manifested its willingness to renew by issuing or offering to issue a renewal policy, certificate or other evidence of renewal, or has manifested such intention ~~by any other means;~~ *in writing to the insured;*

(2) If the named insured has notified in writing the insurer or its agent that he wishes the policy to be cancelled or that he does not wish the policy to be renewed~~;~~, *or if he fails to accept the offer of the insurer;*

(3) To any policy of automobile insurance which has been in effect less than sixty days, unless it is a renewal policy.

(g) There shall be no liability on the part of and no cause of action of any nature shall arise against *the Commissioner of Insurance or his subordinates,* its authorized representative, its agents, its employees, or any firm, person or corporation furnishing to the insurer information as to reasons for cancellation or refusal to renew for any statement made by any of them in complying with this section or for the providing of information pertaining thereto. *No insurer shall be required to furnish a notice of cancellation or refusal to renew to anyone other than the named insured and the Commissioner of Insurance.*

(h) Notwithstanding any provision herein contained, any insured *or his*

attorney ~~may~~ *shall,* within ten days of the receipt of the notice of cancellation or notice of ~~intention not~~ *refusal* to renew, ~~or the receipt of the reason or reasons for cancellation or refusal to renew if they were not stated in the notice,~~ be entitled to request in writing to the ~~Insurance Commissioner~~ *Commissioner of Insurance* that he review the action ~~of the insurer in cancelling~~ or refusing to renew the policy of such insured. *Upon receipt of such request, the Commissioner of Insurance shall promptly initiate a review to determine whether the insurer's cancellation or refusal to renew complies with the requirements of this section.* The policy shall remain in full force and effect during the pendency of the review by the ~~Insurance Commissioner~~ *Commissioner of Insurance* except where the cancel~~lation or refusal to renew was~~ *is* for ~~nonpayment under~~ *the reason set forth in* clause (6), paragraph (d), in which case the policy shall terminate as of the date provided in the notice. ~~under clause (2), paragraph (c).~~ *Where the Commissioner finds from such review that the cancellation or refusal to renew has not been effected in compliance with the requirements of this section, he shall forthwith notify the insurer and the insured that the cancellation or refusal to renew is not effective. Nothing herein shall be construed as authorizing the Commissioner of Insurance to substitute his judgment as to underwriting for that of the insurer.*

(i) (A) ~~If any provision or clause of this section or application thereof to any person or situation is held invalid, such invalidity shall not affect other provisions or applications of the section which can be given effect without the invalid provision or application, and to this end the provisions of this section are declared to be severable~~.

(B) Each insurer shall maintain records of *cancellation and* refusal to renew and shall forward to the Commissioner *of Insurance,* for *his use and* information purposes only, copies of every notice or statement referred to in paragraph ~~(g)~~ *(e)* of this section which it shall at any time send to any of its insureds.

(j) ~~All acts and parts of acts are repealed insofar as they are inconsistent herewith~~. *The provisions of this section shall not apply to any insurer who shall limit the issuance of policies of automobile liability insurance to one class or group of persons engaged in any one particular profession, trade, occupation or business.* Nothing herein shall be construed to require an insurer to renew a policy of automobile insurance if the insured does not conform to the occupational or membership requirement of an insurer who limits its writings to an occupation or membership of an organization. Nor shall any insurer be required to renew should the insured become a nonresident of Virginia.

(k) ~~The provisions of this section shall not apply to any insurer who shall limit the insurance of policies of automobile liability insurance to one class or group of persons engaged in any one particular profession, trade, occupation or business~~. *All acts and parts of acts are hereby repealed insofar as they are inconsistent herewith. If any provision or clause of this section or application thereof to any person or situation is held invalid, such invalidity shall not affect other provisions or applications of the section which can be given effect without the invalid provision or application, and to this end the provisions of this section are declared to be severable.*

A BILL

To amend the Code of Virginia by adding in Article 3 of Chapter 8 of Title 38.1 sections numbered 38.1-371.1 and 38.1-371.2 pertaining to the mailing of notices of termination of certain contracts of fire insurance and to regulate the cancellation of or refusal to renew certain contracts of fire insurance; and imposing powers and duties upon the Commissioner of Insurance with regard to such cancellations and refusals to renew.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia be amended by adding in Article 3 of Chapter 8 of Title 38.1 sections numbered 38.1-371.1 and 38.1-371.2, as follows:

§ 38.1-371.1. No written notice of cancellation or refusal to renew a policy of fire insurance only, or fire insurance in combination with other insurance coverages, written to insure owner-occupied dwellings sent by mail by an insurer shall be effective unless it is sent by registered or certified mail or unless at the time of the mailing of said notice, the insurer has obtained from the Post Office Department a written receipt showing the name and address of the insured and the insurer has retained a duplicate copy of said notice upon which is endorsed a certificate by the insurer that the duplicate copy is a copy of the notice which was sent to the insured in the mail for which said receipt was obtained; provided that this section shall not apply to such policies written through the Virginia Insurance Placement Facility or any other insurance placement facility established pursuant to Chapter 19 of Title 38.1.

§ 38.1-371.2. (a) No policy or contract of fire insurance only, or fire insurance in combination with other coverages written to insure owner-occupied dwellings shall be terminated by an insurer by cancellation except upon written notice for nonpayment of premium. Nor shall any such policy or contract of fire insurance only, or fire insurance in combination with other coverages, be terminated by an insurer by refusal to renew except at the expiration of the stated policy period or term and unless the insurer or its agent acting on behalf of the insurer, mails or delivers to the named insured at the address stated in the policy, not less than thirty days prior to the expiration date of the policy, written notice of the insurer's refusal to renew the policy or contract. A written notice of cancellation of or refusal to renew such policy or contract of fire insurance only, or fire insurance written in combination with other coverages, shall:

(1) State the date upon which the insurer proposes to terminate the policy or contract;

(2) State the specific reason or reasons of the insurer for terminating the policy or contract;

(3) Advise the insured that he may request in writing within ten days of receipt of the insurer's notice of termination that the Commissioner of Insurance review the action of the insurer in terminating the policy or contract; and,

(4) Advise the insured of his possible eligibility for fire insurance coverage through the Virginia Insurance Placement Facility.

(b) Notwithstanding any provision herein contained, any insured or his attorney shall, within ten days of receipt of the notice of termination, be entitled to request in writing to the Commissioner of Insurance that he review the action of the insurer in terminating such policy or contract of fire insurance only or fire insurance in combination with other insurance coverages written to insure owner-occupied dwellings. Upon receipt of such request, the Commissioner of Insurance shall promptly initiate a review to determine whether the insurer's cancellation or refusal to renew complies with the requirements of this section. The policy shall remain in full force and effect during the pendency of the review by the Commissioner of Insurance except where the cancellation or refusal to renew is for reason of nonpayment of premium, in which case the policy shall terminate as of the date stated in the notice. Where the Commissioner finds from such review that the cancellation or refusal to renew has not been effected in compliance with the requirements of this section, he shall forthwith notify the insurer and the insured that the cancellation or refusal to renew is not effective. Nothing herein shall be construed as authorizing the Commissioner of Insurance to substitute his judgment as to underwriting for that of the insurer.

(c) Nothing in this section shall apply:

(1) To any policy of fire insurance only, or fire insurance in combination with other insurance coverages, written to insure owner-occupied dwellings, which has been in effect for less than ninety days when the notice of termination is mailed or delivered to the insured;

(2) If the insurer or its agent acting on behalf of the insurer has manifested its willingness to renew by issuing or offering to issue a renewal policy, certificate or other evidence of renewal, or has otherwise manifested such intention in writing to the insured.

(3) If the named insured has notified in writing the insurer or its agent that he wishes the policy to be cancelled, or that he does not wish the policy to be renewed, or if he fails to accept the offer of the insurer to renew the policy.

(4) To any contract or policy of fire insurance only, or fire insurance in combination with other insurance coverages written through the Virginia Insurance Placement Facility or any insurance placement facility established pursuant to Chapter 19 of Title 38.1.

(d) There shall be no liability on the part of and no cause of action of any nature shall arise against the Commissioner of Insurance or his subordinates, any insurer, its authorized representative, its agents, its employees or any firm, person or corporation furnishing to the insurer information as to reasons for cancellation or refusal to renew for any statement made by any of them in complying with this section or for the providing of information pertaining thereto.

(e) All acts and parts of acts are hereby repealed insofar as they are inconsistent herewith. If any provision or clause of this section or application thereof to any person or situation is held invalid, such invalidity shall not affect other provisions or applications of the section which can be given effect without the invalid provision or application, and to this end the provisions of this section are declared to be severable.