

CERTAIN INSURANCE MATTERS

**REPORT OF THE
VIRGINIA ADVISORY LEGISLATIVE COUNCIL**

To

THE GOVERNOR

And

THE GENERAL ASSEMBLY OF VIRGINIA



House Document No. 17

**COMMONWEALTH OF VIRGINIA
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Report of the
Virginia Advisory Legislative Council

on

Certain Insurance Matters

to

The Governor and The General Assembly of Virginia

Richmond, Virginia

January 5, 1974

To: HONORABLE LINWOOD HOLTON, *Governor of Virginia*

and

THE GENERAL ASSEMBLY OF VIRGINIA

INTRODUCTION

This report is a result of the directive contained in House Joint Resolution No. 222 passed by the 1973 Session of The General Assembly as follows:

HOUSE JOINT RESOLUTION NO. 222

Directing the Virginia Advisory Legislative Council to make a study of certain insurance matters.

Whereas, life, accident and health insurances are purchased by great numbers of citizens of this Commonwealth in an attempt to guard themselves and their families against various hazards; and

Whereas, the contracts of insurance in such fields are highly complex with many ramifications and problems which the average citizen is ill equipped to deal with adequately; and

Whereas, trained and experienced agents can do much to protect the consumer and to help him in purchasing a contract of insurance which is best suited to his needs, whether such needs are in the fields of life, accident or health insurance; and

Whereas, it may be that the General Assembly should attempt regulation for the protection of the consumer in these fields after adequate study thereof; now, therefore, be it

Resolved by the House of Delegates, the Senate concurring, That the Virginia Advisory Legislative Council is hereby directed to make a study and report upon all aspects of insurance involving contracts of life insurance, health insurance, and accident insurance to the end that the consumer may purchase protection suitable to his needs. The Council shall seek the advice of the Bureau of Insurance of the State Corporation Commission and shall consider the practices now existing in the merchandising of such policies of insurance. The Council shall solicit the cooperation and assistance of persons having knowledge in these fields to the end that an intensive and well balanced study may be made. All agencies of the State shall assist the Council in its study.

The Council shall conclude its study and make its report to the Gov-

ernor and the General Assembly not later than December one, nineteen hundred seventy-three.

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Pursuant to the study directive, the Virginia Advisory Legislative Council appointed Mr. Robert T. Barham, Jr., C.L.U., Roanoke; Mr. Harold Stanley Bourne, Richmond; Mr. Robert S. Day, C.L.U., Alexandria; Mr. William M. Deemer, C.L.U., Blacksburg; Mr. George H. Fletcher, Jr., Roanoke; Mr. Willis Jackson, C.L.U., Roanoke; Mr. Irvin F. Kennedy, C.L.U., Richmond; Dr. David R. Klock, Blacksburg; Honorable John L. Melnick, Arlington; Mr. Nathan Metzger, C.L.U., Richmond; Dr. S. Travis Pritchett, Richmond; Mr. Godfrey L. Smith, III, C.L.U., Newport News; and Mr. C. William Waechter, Jr., Esquire, Richmond, to the membership of the Committee. Honorable Russell M. Carneal of Williamsburg was named Chairman of the Committee and Mr. Robert T. Barham, Jr. was elected Vice-Chairman.

The Virginia Advisory Legislative Council and the Division of Legislative Services made staff and facilities available to carry out the study directive, Mr. L. Willis Robertson, Jr. and Mrs. Janet C. Baker, being assigned to assist the members of the Committee.

At the outset of the study, the members of the Committee sought to familiarize themselves with the problems presently experienced by the Virginia consumer in the purchase of life, accident and health insurance. In addition to the information supplied by the members of the study Committee engaged in the sale and service of life, accident and health insurance, the Committee also heard from representatives of the domestic insurers and Mr. William G. Flournoy, Assistant Commissioner of the Bureau of Insurance, in attempting to determine what areas of the life, accident and health field presented the major problems to the consumers of the Commonwealth.

After isolating the major consumer problems in the field of life, accident and health insurance, the Committee appointed two subcommittees to study and report on some of these problems. Mr. William M. Deemer, Mr. George H. Fletcher, Jr. and Dr. David R. Klock served on the agent licensing subcommittee and Mr. Robert T. Barham, Jr., Mr. Robert S. Day and Mr. Nathan Metzger served on a subcommittee charged with reporting on disclosure statements and mail order marketing of insurance.

During its deliberations, the Committee heard the Honorable Everette S. Francis, Commissioner of Insurance, speak to the feasibility of implementing some of the preliminary Committee recommendations.

After careful review of the Committee's work the Council now makes its recommendations.

COUNCIL RECOMMENDATIONS

1. That § 38.1-301.4 of the Code of Virginia, relating to issuance of temporary licenses to life agents be amended and reenacted to provide for the issuance of such licenses for a period of ninety days rather than six months and to limit the circumstances in which such temporary licenses may be issued. See proposed legislation in Appendix I of this report.
2. That the State Corporation Commission be requested to consider the adoption of rules and regulations which would substantially conform to the 1973 N.A.I.C. Model Rules Governing Advertisements of Acci-

dent and Sickness Insurance. See proposed rules and regulations in Appendix II of this report.

3. That the life of the Committee Studying Certain Insurance Matters be continued to study the feasibility of implementing certain recommendations of the National Association of Insurance Commissioners for the benefit of the Virginia consumer of life, accident and health insurance. See proposed legislation in Appendix III of this report.

REASONS FOR COUNCIL RECOMMENDATIONS

1. That § 38.1-301.4 of the Code of Virginia, relating to issuance of temporary licenses to life agents be amended and reenacted to provide for the issuance of such licenses for a period of ninety days rather than six months and to limit the circumstances in which such temporary licenses may be issued.

The members of the Council feel strongly that properly trained and educated insurance agents are the best protection available to the average consumer of insurance who has little knowledge of the terminology and ramifications of the insurance contract. In accordance with this position the Council believes that the issuance of temporary licenses prior to the qualification of an agent should be further limited by the proposed amendment to § 38.1-301.4 contained in Appendix I of this report.

The proposed amendment limits both the circumstances in which a temporary license will be issued and the duration of such temporary license. The proposed amendment provides that temporary licenses shall be issued only to the executor, administrator or surviving next of kin of a deceased person who at the time of his death was a licensed agent and to applicants for license who will actually collect premiums on debit life insurance contracts during the period of such license. Section 38.1-301.4 presently provides that temporary licenses may be issued to the personal representative, surviving consort, employee or next of kin of a dead agent; to the consort, next of kin, employee or legal representative of an agent upon his inability to act because of sickness, injury or mental incapacity; to an employee or purchaser of a business upon an agent's sale of his business; to an applicant whose company conducts an adequate training course for its prospective agents; and to an applicant who regularly collects premiums on policies of industrial life or industrial accident and sickness insurance. The proposed amendment also provides that temporary licenses shall be for a period of ninety (90) days only while the present law provides that a temporary license shall be for a period of six months.

The Council received evidence that some companies operating in Virginia were abusing the privilege of temporary licensing by using salesmen who were inexperienced and uneducated in many aspects of the insurance business to sell for them during the six months temporary licensing period and who further had no intention of taking the qualifying examination to become a licensed agent. The Council feels that its proposed amendment to § 38.1-301.4 of the Code of Virginia will help to curb this practice in the Commonwealth and will upgrade the quality of new agents throughout the State. In making its decision, the Council noted that the national trend is moving toward the abolition of temporary licensing of insurance agents.

2. That the State Corporation Commission be requested to consider the

adoption of rules and regulations which would substantially conform to the 1973 N.A.I.C. Model Rules Governing Advertisements of Accident and Sickness Insurance.

The Council received evidence of misleading advertisements being used in the Commonwealth today for accident and sickness insurance. Examples of such advertising were found in the mail of some Committee members and in newspapers circulated throughout the State.

The Council feels that rules and regulations similar to the 1972 N.A.I.C. Model Rules Governing Advertisements of Accident and Sickness Insurance should be promulgated by the State Corporation Commission to help deter the use of misleading advertising of accident and sickness insurance in the Commonwealth.

The proposed rules and regulations, if enacted, will help the average consumer determine exactly what he is purchasing and will make it difficult for insurers to word their advertisements so as to mislead prospective purchasers. A copy of the N.A.I.C. Model Rules is contained in Appendix II of this report.

During the course of its deliberations the Council heard evidence of marketing techniques used by certain domestic insurers to lead a prospective purchaser to believe he was buying something other than insurance. Consequently, the Council has requested the State Corporation Commission to consider the feasibility of enacting rules and regulations to govern the sale of certain specialty insurance policies which are the subject of these unethical marketing practices.

3. That the life of the Committee Studying Certain Insurance Matters be continued to study the feasibility of implementing certain recommendations of the National Association of Insurance Commissioners for the benefit of the Virginia consumer of life, accident and health insurance.

Although the Council feels that its recommendations, if enacted, will substantially alleviate the major consumer problems presently existing in the fields of life, accident and sickness insurance, it was the consensus of opinion of the membership of the Council that the Committee's life should be extended for another year to fully comply with the directives contained in House Joint Resolution No. 222.

The Council feels that a number of N.A.I.C. proposed Acts and Rules and Regulations have merit and the feasibility of enacting similar laws in Virginia should be fully explored. The Council feels that such an undertaking will entail a substantial amount of additional time and thought on the part of the members of the Committee; and they, therefore, respectfully request that the study be continued for another year.

CONCLUSION

The members of the Council feel that the evidence they received during the course of the study indicates the need for a number of changes in the present Virginia law governing life, accident and sickness insurance. The recommendations contained in this report, if enacted, will alleviate a number of problems presently facing the Virginia consumer of life, accident and sickness insurance. However, to fully comply with the charges of House Joint Resolution No. 222 it is the belief of the Council that more time is necessary to make intelligent recommendations in this difficult area. Therefore, the Council respectfully requests that the Vir-

ginia Advisory Legislative Council recommend that the General Assembly extend the life of the Committee for another year.

Respectfully submitted,

Lewis A. McMurrin, Jr., *Chairman*

Willard J. Moody, *Vice Chairman*

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APPENDIX I

A B I L L

To amend and reenact § 38.1-301.4 of the Code of Virginia, relating to issuance of temporary licenses for life agents.

Be it enacted by the General Assembly of Virginia :

1. That § 38.1-301.4 of the Code of Virginia is amended and reenacted as follows:

§ 38.1-301.4. Temporary licenses for life agents; when issued.—A temporary life agent's license shall be issued by the Commission in the following circumstances:

~~(1) Upon the death of an agent, to his personal representative, surviving consort, employee or next of kin;~~

~~(2) Upon the inability of an agent to act because of sickness, injury or mental incapacity, to his consort, next of kin, employee or legal representative;~~

~~(3) Upon the sale of an agent's business, to the purchaser of the business, or to any person employed in such business;~~

~~(4) To an applicant for a license as an agent of a company that has or conducts for its agents a training course reasonably adequate, in the opinion of the Commission, for such purpose;~~

~~(5) To an applicant for a license whose duties for the company he represents or proposes to represent will require that he regularly or from time to time collect premiums on policies of industrial life or industrial accident and sickness insurance; for the purposes of this provision, policies of industrial life insurance and policies of industrial accident and sickness insurance is that insurance on which premiums are payable monthly or oftener.~~

(a) To the executor or administrator of the estate of a deceased person who at the time of his death was a licensed agent;

(b) To a surviving next of kin of such a deceased person if no administrator or executor has been appointed or qualified, but any license issued under this subsection shall be revoked upon issuance of a license to an administrator or executor under subsection (a) of this section;

(c) To an applicant who has fulfilled the provisions of this article exclusive of a qualifying examination where such applicant will actually collect the premiums on debit life insurance contracts during the period of such temporary license; provided that such license shall, with respect to the applicant's solicitation and sales activities during such period, authorize only the solicitation and sale of debit life insurance contracts; provided, further, that if such temporary license is not received from the Commission within fifteen days from the date the application was sent to the Commission, the company may assume that the temporary license will be issued in due course. For the purpose of this section, a debit life insurance contract shall mean a contract for which the premiums are payable at monthly or more frequent intervals directly by the owner thereof, or by a person representing the owner, to a representative of the company.

Before any such temporary license is issued the applicant shall file

with the Commission an application in writing in such form and containing such information as the Commission may prescribe. No written examination shall be required of the applicant, but no license shall be issued until the Commission is satisfied that the applicant is trustworthy and competent to serve. A temporary license shall be for a period of ~~six months~~ *ninety days; provided, however, a license issued pursuant to subsection (c) shall not be renewable*; but one holding a temporary license shall not thereby be prevented from securing a life agent's license by meeting the requirements for the latter, nor shall a temporary license be required before one may obtain a life agent's license. *The Commission, in its discretion, may renew licenses granted under subsections (a) or (b) hereof upon proper application and for good cause.*

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APPENDIX II

NAIC MODEL RULES GOVERNING ADVERTISEMENTS OF ACCIDENT AND SICKNESS INSURANCE

As Adopted December 5, 1972

Section 1. Purpose

The purpose of these rules is to assure truthful and adequate disclosure of all material and relevant information in the advertising of accident and sickness insurance. This purpose is intended to be accomplished by the establishment of, and adherence to, certain minimum standards and guidelines of conduct in the advertising of accident and sickness insurance in a manner which prevents unfair competition among insurers and is conducive to the accurate presentation and description to the insurance buying public of a policy of such insurance offered through various advertising media.

Section 2. Applicability

- A. These rules shall apply to any accident and sickness insurance "advertisement", as that term is hereinafter defined, intended for presentation, distribution or dissemination in this State when such presentation, distribution or dissemination is made either directly or indirectly by or on behalf of an insurer, agent, broker or solicitor as those terms are defined in the Insurance Code of this state and these rules.
- B. Every insurer shall establish and at all times maintain a system of control over the content, form and method of dissemination of all advertisements of its policies. All such advertisements, regardless of by whom written, created, designed or presented, shall be the responsibility of the insurer whose policies are so advertised.

Section 3. Definitions

- A. An advertisement for the purpose of these rules shall include:
 - (1) printed and published material, audio visual material, and descriptive literature of an insurer used in direct mail, newspapers, magazines, radio scripts, TV scripts, billboards and similar displays; and
 - (2) descriptive literature and sales aids of all kinds issued by an insurer, agent or broker for presentation to members of the insurance buying public, including but not limited to circulars, leaflets, booklets, depictions, illustrations, and form letters; and
 - (3) prepared sales talks, presentations and material for use by agents, brokers and solicitors.
- B. "Policy" for the purpose of these rules shall include any policy, plan, certificate, contract, agreement, statement of coverage, rider or endorsement which provides accident or sickness benefits or medical, surgical or hospital expense benefits, whether on an indemnity, reimbursement, service or prepaid basis, except when issued in connection with another kind of insurance other than life and except disability, waiver of premium and double indemnity benefits included in life insurance and annuity contracts.
- C. "Insurer" for the purpose of these rules shall include any individual,

corporation, association, partnership, reciprocal exchange, inter-insurer, Lloyds, fraternal benefit society, health maintenance organization, and any other legal entity which is defined as an "insurer" in the Insurance Code of this State and is engaged in the advertisement of a policy as "policy" is herein defined.

- D. "Exception" for the purpose of these rules shall mean any provision in a policy whereby coverage for a specified hazard is entirely eliminated; it is a statement of a risk not assumed under the policy.
- E. "Reduction" for the purpose of these rules shall mean any provision which reduces the amount of the benefit; a risk of loss is assumed but payment upon the occurrence of such loss is limited to some amount or period less than would be otherwise payable had such reduction not been used.
- F. "Limitation" for the purpose of these rules shall mean any provision which restricts coverage under the policy other than an exception or a reduction.

Section 4. Method of Disclosure of Required Information

All information required to be disclosed by these rules shall be set out conspicuously and in close conjunction with the statements to which such information relates or under appropriate captions of such prominence that it shall not be minimized, rendered obscure or presented in an ambiguous fashion or intermingled with the context of the advertisement so as to be confusing or misleading.

Section 5. Form and Content of Advertisements

- A. The format and content of an advertisement of an accident or sickness insurance policy shall be sufficiently complete and clear to avoid deception or the capacity or tendency to mislead or deceive. Whether an advertisement has a capacity or tendency to mislead or deceive shall be determined by the Commissioner of Insurance from the overall impression that the advertisement may be reasonably expected to create upon a person of average education or intelligence, within the segment of the public to which it is directed.
- B. Advertisements shall be truthful and not misleading in fact or in implication. Words or phrases, the meaning of which is clear only by implication or by familiarity with insurance terminology, shall not be used.

Section 6. Advertisements of Benefits Payable, Losses Covered or Premiums Payable

A. Deceptive Words, Phrases or Illustrations Prohibited

- (1) No advertisement shall omit information or use words, phrases, statements, references or illustrations if the omission of such information or use of such words, phrases, statements, references or illustrations has the capacity, tendency or effect of misleading or deceiving purchasers or prospective purchasers as to the nature or extent of any policy benefit payable, loss covered or premium payable. The fact that the policy offered is made available to a prospective insured for inspection prior to consummation of

the sale or an offer is made to refund the premium if the purchaser is not satisfied, does not remedy misleading statements.

- (2) No advertisement shall contain or use words or phrases such as, "all"; "full"; "complete"; "comprehensive"; "up limited"; "up to"; "as high as"; "this policy will help fill some of the gaps that Medicare and your present insurance leave out"; "this policy will help to replace your income" (when used to express loss of time benefits); or similar words and phrases, in a manner which exaggerates any benefits beyond the terms of the policy.
- (3) An advertisement shall not contain descriptions of a policy limitation, exception, or reduction, worded in a positive manner to imply that it is a benefit, such as, describing a waiting period as a "benefit builder", or stating "even pre-existing conditions are covered after two years." Words and phrases used in an advertisement to describe such policy limitations, exceptions and reductions shall fairly and accurately describe the negative features of such limitations, exceptions and reductions of the policy offered.
- (4) No advertisement of a benefit for which payment is conditional upon confinement in a hospital or similar facility shall use words or phrases such as "tax free"; "extra cash"; "extra income"; "extra pay"; or substantially similar words or phrases because such words and phrases have the capacity, tendency or effect of misleading the public into believing that the policy advertised will, in some way, enable them to make a profit from being hospitalized.

Drafting Note to Section 6A(4): Although this rule prohibits the use of the phrase "tax free," it does not prohibit the use of a complete and accurate terminology explaining the IRS rules applicable to the taxation of types of accident and sickness benefits. It should be noted that IRS Revenue Rules provide that the premiums paid for and the benefits received from hospital indemnity policies are subject to the same rules as loss of time premiums and benefits, and are not afforded the same favorable tax treatment as expense incurred hospital, medical and surgical benefits coverages.

- (5) No advertisement of a hospital or other similar facility confinement benefit shall advertise that the amount of the benefit is payable on a monthly or weekly basis when, in fact, the amount of the benefit payable is based upon a daily pro rata basis relating to the number of days of confinement. When the policy contains a limit on the number of days of coverage provided, such limit must appear in the advertisement.
- (6) No advertisement of a policy covering only one disease or a list of specified diseases shall imply coverage beyond the terms of the policy. Synonymous terms shall not be used to refer to any disease so as to imply broader coverage than is the fact.

- (7) An advertisement for a policy providing benefits for specified illnesses only, such as cancer, or for specified accidents only, such as automobile accidents, shall clearly and conspicuously in prominent type state the limited nature of the policy. The statement shall be worded in language identical to, or substantially similar to the following: "THIS IS A LIMITED POLICY"; "THIS IS A CANCER ONLY POLICY"; "THIS IS AN AUTOMOBILE ACCIDENT ONLY POLICY".
- (8) An advertisement of a direct response insurance product shall not imply that because "no insurance agent will call and no commissions will be paid to agents" that it is "a low cost plan," or use other similar words or phrases because the cost of advertising and servicing such policies is a substantial cost in the marketing of a direct response insurance product.

B. Exceptions, Reductions and Limitations

- (1) When an advertisement refers to either dollar amount, or a period of time for which any benefit is payable, or the cost of the policy, or specific policy benefit, or the loss for which such benefit is payable, it shall also disclose those exceptions, reductions and limitations affecting the basic provisions of the policy without which the advertisement would have the capacity or tendency to mislead or deceive.
- (2) When a policy contains a waiting, elimination, probationary or similar time period between the effective date of the policy and the effective date of coverage under the policy or at a time period between the date a loss occurs and the date benefits begin to accrue for such loss, an advertisement which is subject to the requirements of the preceding paragraph shall disclose the existence of such periods.
- (3) An advertisement shall not use the words "only"; "just"; "merely"; "minimum" or similar words or phrases to describe the applicability of any exceptions and reductions, such as: "This policy is subject to the following minimum exceptions and reductions".

C. Pre-Existing Conditions

- (1) An advertisement which is subject to the requirements of Section 6B shall, in negative terms, disclose the extent to which any loss is not covered if the cause of such loss is traceable to a condition existing prior to the effective date of the policy. The use of the term "pre-existing condition" without an appropriate definition or description shall not be used.
- (2) When a policy does not cover losses resulting from pre-existing conditions, no advertisement of the policy shall state or imply that the applicant's physical condition or medical history will not affect the issuance of the policy or payment of a claim thereunder. This rule prohibits the use of the phrase "no medical examination required" and phrases of similar import, but does not prohibit explain-

ing "automatic issue." If an insurer requires a medical examination for a specified policy, the advertisement shall disclose that a medical examination is required.

- (3) When an advertisement contains an application form to be completed by the applicant and returned by mail for a direct response insurance product, such application form shall contain a question or statement which reflects the preexisting condition provisions of the policy immediately preceding the blank space for the applicant's signature. For example, such an application form shall contain a question or statement substantially as follows:

Do you understand that this policy will not pay benefits during the first year(s) after the issue date for a disease or physical condition which you now have or have had in the past? YES

Section 7. Necessity for Disclosing Policy Provisions Relating to Renewability, Cancellability and Termination

When an advertisement refers to either a dollar amount or a period of time for which any benefit is payable, or the cost of a policy, or specific policy benefit, or the loss for which such benefit is payable, it shall disclose the provisions relating to renewability, cancellability and termination and any modification of benefits, losses covered or premiums because of age or for other reasons, in a manner which shall not minimize or render obscure the qualifying conditions.

Section 8. Testimonials or Endorsements by Third Parties

- A. Testimonials used in advertisements must be genuine, represent the current opinion of the author, be applicable to the policy advertised and be accurately reproduced. The insurer, in using a testimonial, makes as its own all of the statements contained therein, and the advertisement, including such statement, is subject to all the provisions of these rules.
- B. If the person making a testimonial, an endorsement or an appraisal has a financial interest in the insurer or a related entity as a stockholder, director, officer, employee, or otherwise, such fact shall be disclosed in the advertisement. If a person is compensated for making a testimonial, endorsement or appraisal, such fact shall be disclosed in the advertisement by language substantially as follows: "Paid Endorsement." This rule does not require disclosure of union "scale" wages required by union rules if the payment is actually for such "scale" for TV or radio performances. The payment of substantial amounts, directly or indirectly, for "travel and entertainment" for filming or recording of TV or radio advertisements remove the filming or recording from the category of an unsolicited testimonial and require disclosure of such compensation.
- C. An advertisement shall not state or imply that an insurer or a policy has been approved or endorsed by any individual, group of individuals, society, association or other organizations, unless such is the fact, and unless any proprietary relationship between an organization and the insurer is disclosed. If the entity making the endorsement or testimonial has been formed

by the insurer or is owned or controlled by the insurer or the person or persons who own or control the insurer, such face shall be disclosed in the advertisement.

- D. When a testimonial refers to benefits received under a policy, the specific claim data, including claim number, date of loss, and other pertinent information shall be retained by the insurer for inspection for a period of four years or until the filing of the next regular report on examination of the insurer, whichever is the longer period of time.

Section 9. Use of Statistics

- A. An advertisement relating to the dollar amounts of claims paid, the number of persons insured, or similar statistical information relating to any insurer or policy shall not use irrelevant facts, and shall not be used unless it accurately reflects all of the relevant facts. Such an advertisement shall not imply that such statistics are derived from the policy advertised unless such is the fact, and when applicable to other policies or plans shall specifically so state.
- B. An advertisement shall not represent or imply that claim settlements by the insurer are "liberal" or "generous," or use words of similar import, or that claim settlements are or will be beyond the actual terms of the contract. An unusual amount paid for a unique claim for the policy advertised is misleading and shall not be used.
- C. The source of any statistics used in an advertisement shall be identified in such advertisement.

Section. 10. Identification of Plan or Number of Policies

- A. When a choice of the amount of benefits is referred to, an advertisement shall disclose that the amount of benefits provided depends upon the plan selected and that the premium will vary with the amount of the benefits selected.
- B. When an advertisement refers to various benefits which may be contained in two or more policies, other than group master policies, the advertisement shall disclose that such benefits are provided only through a combination of such policies.

Section 11. Disparaging Comparisons and Statements

An advertisement shall not directly or indirectly make unfair or incomplete comparisons of policies or benefits or comparisons of non-comparable policies of other insurers, and shall not disparage competitors, their policies, services or business methods, and shall not disparage or unfairly minimize competing methods of marketing insurance.

Section 12. Jurisdictional Licensing and Status of Insurer

- A. An advertisement which is intended to be seen or heard beyond the limits of the jurisdiction in which the insurer is licensed shall not imply licensing beyond those limits.
- B. An advertisement shall not create the impression directly or indirectly that the insurer, its financial condition or status, or

the payment of its claims, or the merits, desirability, or advisability of its policy forms or kinds or plans of insurance are approved, endorsed, or accredited by any division or agency of this State or the United States Government.

Section 13. Identity of Insurer

- A. The name of the actual insurer and the form number or numbers advertised shall be identified and made clear in all of its advertisements. An advertisement shall not use a trade name, any insurance group designation, name of the parent company of the insurer, name of a particular division of the insurer, service mark, slogan, symbol or other device which without disclosing the name of the actual insurer would have the capacity and tendency to mislead or deceive as to the true identity of the insurer.
- B. No advertisement shall use any combination of words, symbols, or physical materials which by their content, phraseology, shape, color or other characteristics are so similar to combination of words, symbols, or physical materials used by agencies of the federal government or of this State, or otherwise appear to be of such a nature that it tends to confuse or mislead prospective insureds into believing that the solicitation is in some manner connected with an agency of the municipal, state, or federal government.

Section 14. Group or Quasi-Group Implications

An advertisement of a particular policy shall not state or imply that prospective insureds become group or quasi-group members covered under a group policy and as such enjoy special rates or underwriting privileges, unless such is the fact.

Section 15. Introductory, Initial or Special Offers

- A. (1) An advertisement of an individual policy shall not directly or by implication represent that a contract or combination of contracts is an introductory, initial or special offer, or that applicants will receive substantial advantages not available at a later date, or that the offer is available only to a specified group of individuals, unless such is the fact. An advertisement shall not contain phrases describing an enrollment period as "special," "limited," or similar words or phrases when the insurer uses such enrollment periods as the usual method of advertising accident and sickness insurance.
- (2) An enrollment period during which a particular insurance product may be purchased on an individual basis shall not be offered within this State unless there has been a lapse of not less than 6 months between the close of the immediately preceding enrollment period for the same product and the opening of the new enrollment period. The advertisement shall indicate the date by which the applicant must mail the application, which shall be not less than ten days and not more than forty days from the date that such enrollment period is advertised for the first time. This rule applies to all advertising media, i.e., mail,

newspapers, radio, television, magazines and periodicals, by any one insurer. It is inapplicable to solicitations of employees or members of a particular group or association which otherwise would be eligible under specific provisions of the Insurance Code for group, blanket or franchise insurance. The phrase "any one insurer" includes all the affiliated companies of a group of insurance companies under common management or control.

- (3) This rule prohibits any statement or implication to the effect that only a specific number of policies will be sold, or that a time is fixed for the discontinuance of the sale of the particular policy advertised because of special advantages available in the policy, unless such is the fact.
 - (4) The phrase "a particular insurance product" in Paragraph (2) of this Section means an insurance policy which provides substantially different benefits than those contained in any other policy. Different terms of renewability; an increase or decrease in the dollar amounts of benefits; an increase or decrease in any elimination period or waiting period from those available during an enrollment period for another policy shall not be sufficient to constitute the product being offered as a different product eligible for concurrent or overlapping enrollment periods.
- B. An advertisement shall not offer a policy which utilizes a reduced initial premium rate in a manner which overemphasizes the availability and the amount of the initial reduced premium. When an insurer charges an initial premium that differs in amount from the amount of the renewal premium payable on the same mode, the advertisement shall not display the amount of the reduced initial premium either more frequently or more prominently than the renewal premium, and both the initial reduced premium and the renewal premium must be stated in juxtaposition in each portion of the advertisement where the initial reduced premium appears.

Drafting Note to Section 15B: The Drafting Task Force did not reach a consensus on Section 15B. Some states currently prohibit such reduced initial premium. The presence of Section 15B in this draft does not imply in any manner that the states which have always prohibited such initial premium or currently prohibit such initial premium concur in Section 15B.

- C. Special awards, such as a "safe drivers' award" shall not be used in connection with advertisements of accident or accident and sickness insurance.

Section 16. Statements About an Insurer

An advertisement shall not contain statements which are untrue in fact, or by implication misleading, with respect to the assets, corporate structure, financial standing, age or relative position of the insurer in the insurance business. An advertisement shall not contain a recommendation by any commercial rating system unless it clearly indicates the purpose of the recommendation and the limitations of the scope and extent of the recommendation.

Section 17. Enforcement Procedures

A. Advertising File

Each insurer shall maintain at its home or principal office a complete file containing every printed, published or prepared advertisement of its individual policies and typical printed, published or prepared advertisements of its blanket, franchise and group policies hereafter disseminated in this or any other state, whether or not licensed in such other state, with a notation attached to each such advertisement which shall indicate the manner and extent of distribution and the form number of any policy advertised. Such file shall be subject to regular and periodical inspection by this Department. All such advertisements shall be maintained in said file for a period of either four years or until the filing of the next regular report on examination of the insurer, whichever is the longer period of time.

B. Certificate of Compliance

Each insurer required to file an Annual Statement which is now or which hereafter becomes subject to the provisions of these rules must file with this Department, with its Annual Statement, a Certificate of Compliance executed by an authorized officer of the insurer wherein it is stated that, to the best of his knowledge, information and belief, the advertisements which were disseminated by the insurer during the preceding statement year complied or were made to comply in all respects with the provisions of these rules and the Insurance Laws of this State as implemented and interpreted by these rules.

Section 18. Severability Provision

If any Section or portion of a Section of these rules, or the applicability thereof to any person or circumstance is held invalid by a court, the remainder of the rules, or the applicability of such provision to other persons or circumstances, shall not be affected thereby.

Drafting Note: The NAIC has developed Interpretive Guidelines relating to these rules. The NAIC Proceedings should be consulted for references to such Interpretive Guidelines.

Addendum

Section____. Filing for Prior Review

The Commissioner may, in his discretion, require the filing with this Department, for review prior to use, of all direct response advertising material. Such advertising material must be filed by the insurer with this Department not less than 30 days prior to the date the insurer desires to use the advertisement.

Drafting Note: This proposed section is attached as an example which may be used at the option of the Commissioner in States which elect to review direct response advertisements prior to use.

APPENDIX III

HOUSE JOINT RESOLUTION NO. ____

Directing the Virginia Advisory Legislative Council to continue its study of certain insurance matters.

Whereas, life, accident and health insurances are purchased by many citizens of this Commonwealth, and complaints of many groups representing the consumer led the 1973 General Assembly to direct the Virginia Advisory Legislative Council to make a study of certain insurance matters; and

Whereas, although the Committee designated by the Virginia Advisory Legislative Council to study these matters has spent considerable time and effort in this study and has made recommendations for improvements, there is much work still to be done; and

Whereas, the importance of such insurance, the intricacy and complexity of the subject matter involved, and the possibility of improvement for the benefit of the Virginia consumer are substantial reasons for continuing the work of the Committee; now, therefore, be it

Resolved by the House of Delegates, the Senate concurring, That the Virginia Advisory Legislative Council is hereby directed to continue its study of certain insurance matters. The Council shall continue to study all aspects of insurance involving contracts of life, health and accident insurance including the merchandising practices existing on such policies of insurance to the end that the consumer may purchase protection suitable to his needs.

The Council shall solicit the cooperation and assistance of persons having knowledge in the insurance field to the end that an intensive and well balanced study may be made. All agencies of the State shall assist the Council in its study.

The Council shall conclude its study and make its report to the Governor and General Assembly not later than November one, nineteen hundred seventy-four.

