

**INTERIM REPORT OF THE
VIRGINIA ADVISORY LEGISLATIVE COUNCIL
ON
FIRE INSURANCE POLICIES
TO
THE GOVERNOR
AND
THE GENERAL ASSEMBLY OF VIRGINIA**



SENATE DOCUMENT NO. 18

**COMMONWEALTH OF VIRGINIA
DIVISION OF PURCHASES AND SUPPLY
RICHMOND
1979**

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Interim Report of the
Virginia Advisory Legislative Council
on
Fire Insurance Policies
To
The Governor and the General Assembly of Virginia
Richmond, Virginia
January, 1979

To: Honorable John N. Dalton, Governor of Virginia

and

The General Assembly of Virginia

Introduction

The Virginia Advisory Legislative Council's Fire Insurance Policies Committee was established pursuant to House Joint Resolution No. 272 of the 1977 General Assembly.

HOUSE JOINT RESOLUTION NO. 272

WHEREAS, homeowner and fire insurance policies are often difficult for the laymen insured to interpret and comprehend; and

WHEREAS, such policies often restrict the right of the insured to equitable indemnification through stringent and inflexible loss-reporting requirements; and

WHEREAS, several time limitations contained in such policies seem to be without reasonable basis as they may create undue problems for the insured; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That the Virginia Advisory Legislative Council is directed to study the composition of fire insurance policies to determine what changes, if any, need be implemented to make such policies more equitable to all concerned.

The Council shall complete its study and present its findings, conclusions and recommendations to the Governor and the General Assembly not later than November one, nineteen hundred seventy-seven.

All agencies of the Commonwealth are requested to assist the Council in its study.

Senate Joint Resolution No. 41 of the 1978 General Assembly continued the work of the VALC Fire Insurance Policies Committee.

SENATE JOINT RESOLUTION NO. 41

WHEREAS, House Joint Resolution No. 272 of the nineteen hundred seventy-seven General Assembly requested the Virginia Advisory Legislative Council to study the composition of fire insurance policies to determine what changes, if any, need be implemented to make such policies more equitable to all concerned; and

WHEREAS, although the Council has made significant progress in its study, additional work remains to be done; now, therefore, be it

RESOLVED by the Senate, the House of Delegates concurring, That the Virginia Advisory Legislative Council is directed to continue its study of fire insurance policies to determine what changes, if any, need to be implemented to make such policies more equitable to all concerned.

The Council shall complete its study and present its findings, conclusions and recommendations to the Governor and the General Assembly not later than November one, nineteen hundred seventy-eight.

All agencies of the Commonwealth are requested to assist the Council in its study.

George E. Allen, Jr., a member of the House of Delegates of Virginia, was named Chairman of the Committee.

Also appointed to serve were Delegates C. Hardaway Marks of Hopewell, A. L. Philpott of Bassett, and Alson H. Smith, Jr. of Winchester and; Senators Virgil H. Goode, Jr. of Rocky Mount and Coleman B. Yeatts of Chatham.

C. William Cramme', III and Hugh P. Fisher, III of the Division of Legislative Services served as legal and research staff to the Committee.

The Committee has held five meetings during the last two years. At each meeting at least several issues dealing with fire and homeowners' insurance policies as they are currently written in the Commonwealth were discussed. Key witnesses spoke before the Committee at each meeting. The following organizations were particularly well represented at the meetings: The State Bureau of Insurance; The National Association of Independent Insurers; The American Insurance Association; State Farm Insurance Company; Nationwide Insurance Company; Aetna Life and Casualty Company; and Virginia Farm Bureau Mutual Insurance Company.

Recommendations

The Virginia Advisory Legislative Council offers the following recommendations:

(1) Amend two provisions of Code section 38.1-366. The Council feels that this section should be amended so that when a loss occurred, the insured would be required initially to furnish the insurance company a complete inventory of only the destroyed or damaged property, setting forth for each item the amount of loss claimed. Under this amendment the insured would have to furnish the company a complete inventory of the undamaged property only after the company requests such an inventory.

The other amendment to section 38.1-366 would require that if a written demand for an appraisal by an umpire is made by the insurance company, then the insured would be reimbursed by the company for the reasonable cost of the insured's appraiser and the insured's portion of the cost of the umpire. This suggested legislation constitutes Appendix I of this report.

(2) Amend Code section 38.1-367.1 so that an insurance company could issue a simplified and readable fire insurance policy or a fire insurance policy in combination with other coverages which would deviate in language from the standard policy form provided for in sections 38.1-365, 38.1-366 and 38.1-367, if the deviating policy was in each and every respect not less favorable to the insured than such standard policy form, and if the policy was approved by the State Corporation Commission prior to its issuance. This suggested legislation constitutes Appendix II of this report.

(3) Add a section numbered 38.1-367.2 to the Code, which would authorize the State Corporation Commission to issue, after notice and hearing, rules and regulations establishing standards for the content of any policy of fire insurance or fire insurance in combination with other coverages. This suggested legislation constitutes Appendix III of this report.

(4) Accept Appendix IV of this report, which is a suggested House Joint Resolution expressing the sense of the General Assembly that the Commissioner of Insurance actively encourage insurers to issue readable insurance policies in Virginia.

(5) Accept Appendix V of this report, which is a suggested House Joint Resolution requesting that the study be continued for another year.

Reasons for Recommendations

As mentioned above, one of the two amendments suggested by the Council involving section 38.1-366 would provide that when a loss occurred, the insured would be required initially to furnish the insurance company a complete inventory of only the destroyed or damaged property. Under this amendment the insured would be required to furnish the company a complete inventory of the undamaged property only after the company requested such an inventory.

The Council believes that this revision more accurately reflects present practices concerning claims settlements under the provisions of the standard fire policy. The Council has heard testimony that insurance companies usually insist upon detailed information only when serious questions arise concerning the extent of loss, possible fraud, or liability.

The Council's other suggested amendment to section 38.1-366 would require that if a written demand for an appraisal by an umpire is made by the insurance company, then the insured would be reimbursed by the company for the reasonable cost of the insured's appraiser and the insured's portion of the cost of the umpire.

The Council believes that without this amendment, it would be very expensive, in some instances, for the policyholder to pay the fees charged by the appraiser chosen by him and then to subsequently pay the court costs involved if the case goes to court. At the same time, the Council feels that such a revision of the law might be beneficial in that the result may be a settlement of the conflict before the policyholder resorts to the more expensive alternative of judicial review. Therefore, the Council believes that such an amendment would eliminate or diminish the affect of some inequities that may exist in the present process from the policyholder's viewpoint.

The Council's second recommendation is to amend section 38.1-367.1 so that an insurance company could issue a simplified and readable fire insurance policy or a fire insurance policy in combination with other coverages which would deviate in language from the standard policy form provided for in sections 38.1-365, 38.1-366 and 38.1-367, if the deviating policy is in each and every respect not less favorable to the insured than such standard policy form, and if the policy is approved by the Commission prior to its issuance.

The Council believes that this amendment would be beneficial to both the insurance companies in the Commonwealth and their policyholders. The companies would benefit in that they would retain the opportunity to innovate in designing more readable policies. The policyholders would benefit in that no company would be allowed to issue a policy which would be less favorable to the insured than the standard policy form. Consequently, because the amendment would allow the companies to retain flexibility in forms design, and would also benefit the policyholder, the Council recommends its adoption.

The Council's third recommendation is that a section numbered 38.1-367.2 be added to the Code. The proposed section would authorize the State Corporation Commission to issue, after notice and hearing, rules and regulations establishing standards for the content of any policy of fire insurance or fire insurance in combination with other coverages.

The Council believes that the establishment of this Code section would protect the consumer by requiring that any fire or homeowners' insurance policy issued must follow certain minimum standards promulgated by the Commission. Also, the study group feels that the adoption of certain

minimum standards by the Commission would not foreclose true innovation in the designing of policy forms on the part of the insurance industry.

The Council would also point out that the suggested legislation would authorize insurance companies to issue policies with coverages, terms and conditions which are broader and more favorable to the insured than the standards relating to content promulgated by the Commission. The Council believes that by authorizing companies to issue such policies, the consumers of the Commonwealth would benefit from the broader or more favorable coverage and the industry would be given the opportunity to carry out significant innovation in policy forms design.

The Council's fourth recommendation is that the suggested House Joint Resolution which expresses the sense of the General Assembly that the Commissioner of Insurance actively encourage insurers to issue readable insurance policies in Virginia be accepted. The Council feels the Commissioner should actively encourage insurers to issue readable policies, given the importance of readability to the purchasers of fire and homeowners' policies. Further, the Council believes the suggested House Joint Resolution would encourage insurers in the Commonwealth to voluntarily develop such readable policies.

The Council's final recommendation is that the suggested House Joint Resolution which requests that the Council's study be continued for another year be accepted. The Council would point out that it has discussed and made decisions on most of the issues which it feels need to be addressed. However, both the insurance industry and the Bureau of Insurance feel that several other issues need to be addressed by the study group this year. Accordingly, the Council recommends that the study be continued.

Conclusion

The Council feels that its recommendations would effect needed changes in the content of fire and homeowners' insurance policies issued in the Commonwealth. It believes that the recommendations are in the best interests of the citizens of the Commonwealth. At the same time, it feels the recommendations are not detrimental to the work performed by the insurance companies issuing fire and homeowners' insurance policies in the State. The Council looks forward to continuing its work by studying several other issues it feels might lead to more equitable fire policies.

Respectfully submitted,

Lawrence D. Wilder, Chairman

C. Hardaway Marks, Vice-Chairman

George E. Allen, Jr.

Peter K. Babalas

Richard M. Bagley

Vincent F. Callahan, Jr.

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APPENDIX I

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A BILL to amend and reenact § 38.1-366 of the Code of Virginia, relating to standard provisions in fire insurance policies.

Be it enacted by the General Assembly of Virginia:

1. That § 38.1-366 of the Code of Virginia is amended and reenacted as follows:

§ 38.1-366. Standard provisions, conditions, stipulations and agreements for such policies. —Every such policy shall contain the following provisions, conditions, stipulations and agreements, which shall be a standard form for use in all policies of fire insurance issued on property in the State of Virginia:

1 Concealment, This entire policy shall be void if, whether
2 Fraud. before or after a loss, the insured has wil-
3 fully concealed or misrepresented any ma-
4 terial fact or circumstance concerning this insurance or the
5 subject thereof, or the interest of the insured therein, or in case
6 of any fraud or false swearing by the insured relating thereto.

7 Uninsurable This policy shall not cover accounts, bills,
8 and currency, deeds, evidences of debt, money or
9 excepted property. securities; nor, unless specifically named
10 hereon in writing, bullion or manuscripts.

11 Perils not This Company shall not be liable for loss by
12 included. fire or other perils insured against in this
13 policy caused, directly or indirectly, by: (a)
14 enemy attack by armed forces, including action taken by mili-
15 tary, naval or air forces in resisting an actual or an immediately
16 impending enemy attack; (b) invasion; (c) insurrection; (d)
17 rebellion; (e) revolution; (f) civil war; (g) usurped power; (h)
18 order of any civil authority except acts of destruction at the time
19 of and for the purpose of preventing the spread of fire, provided
20 that such fire did not originate from any of the perils excluded
21 by this policy; (i) neglect of the insured to use all reasonable
22 means to save and preserve the property at and after a loss, or
23 when the property is endangered by fire in neighboring prem-
24 ises; (j) nor shall this Company be liable for loss by theft.

25 Other Insurance. Other insurance may be prohibited or the
26 amount of insurance may be limited by en-
27 dorsement attached hereto.

28 Conditions suspending or restricting insurance. Unless other-
29 wise provided in writing added hereto this Company shall not
30 be liable for loss occurring
31 (a) while the hazard is increased by any means within the con-
32 trol or knowledge of the insured; or

1 33 (b) while a described building, whether intended for occupancy
2 34 by owner or tenant, is vacant or unoccupied beyond a period of
3 35 sixty consecutive days; or
4 36 (c) as a result of explosion or riot, unless fire ensue, and in
5 37 that event for loss by fire only.

6 38 Other perils Any other peril to be insured against or sub-
7 39 or subjects. ject of insurance to be covered in this policy
8 40 shall be by endorsement in writing hereon or
9 41 added hereto.

10 42 Added provisions. The extent of the application of insurance
11 43 under this policy and of the contribution to
12 44 be made by this Company in case of loss, and any other pro-
13 45 vision or agreement not inconsistent with the provisions of this
14 46 policy, may be provided for in writing added hereto, but no pro-
15 47 vision may be waived except such as by the terms of this policy
16 48 is subject to change.

17 49 Waiver No permission affecting this insurance shall
18 50 provisions. exist, or waiver of any provision be valid,
19 51 unless granted herein or expressed in writing
20 52 added hereto. No provision, stipulation or forfeiture shall be
21 53 held to be waived by any requirement or proceeding on the part
22 54 of this Company relating to appraisal or to any examination
23 55 provided for herein.

24 56 Cancellation This policy shall be cancelled at any time
25 57 of policy. at the request of the insured, in which case
26 58 this Company shall, upon demand and sur-
27 59 render of this policy, refund the excess of paid premium above
28 60 the customary short rates for the expired time. This pol-
29 61 icy may be cancelled at any time by this Company by giving
30 62 to the insured a five days' written notice of cancellation with
31 63 or without tender of the excess of paid premium above the pro-
32 64 rata premium for the expired time, which excess, if not ten-
33 65 dered, shall be refunded on demand. Notice of cancellation shall
34 66 state that said excess premium (if not tendered) will be re-
35 67 funded on demand.

36 68 Mortgagee If loss hereunder is made payable in whole
37 69 interests and or in part, to a designated mortgagee not
38 70 obligations. named herein as the insured, such interest in
39 71 this policy may be cancelled by giving to such
40 72 mortgagee a ten days' written notice of can-
41 73 cellation.

42 74 If the insured fails to render proof of loss such mortgagee, upon
43 75 notice, shall render proof of loss in the form herein specified
44 76 within sixty (60) days thereafter and shall be subject to the pro-

1 77 visions hereof relating to appraisal and time of payment and of
2 78 bringing suit. If this Company shall claim that no liability ex-
3 79 isted as to the mortgagor or owner, it shall, to the extent of pay-
4 80 ment of loss to the mortgagee, be subrogated to all the mort-
5 81 gagee's rights of recovery, but without impairing mortgagee's
6 82 right to sue; or it may pay off the mortgage debt and require,
7 83 an assignment thereof and of the mortgage. Other provisions
8 84 relating to the interests and obligations of such mortgagee may
9 85 be added hereto by agreement in writing.

10 86 Pro rata liability. This Company shall not be liable for a greater
11 87 proportion of any loss than the amount
12 88 hereby insured shall bear to the whole insurance covering the
13 89 property against the peril involved, whether collectible or not.

14 90 Requirements in The insured shall give immediate written
15 91 case loss occurs. notice to this Company of any loss, protect
16 92 the property from further damage, forthwith
17 93 separate the damaged and undamaged personal property, put
18 94 it in the best possible order, *and furnish a complete inventory*
19 95 *of the destroyed or damaged property setting forth for each item*
20 96 *the amount of loss claimed. The company may, in addition,*
21 97 *require the insured to furnish a complete inventory of*
22 98 *the destroyed, damaged and undamaged property, showing in*
23 99 *detail quantities, costs, actual cash value and amount of loss*
24 100 *claimed; and within sixty days after the loss, unless such time*
25 101 *is extended in writing by this Company, the insured shall render*
26 102 *to this Company a proof of loss, signed and sworn to by the*
27 103 *insured, stating the knowledge and belief of the insured as to*
28 104 *the following: the time and origin of the loss, the interest of the*
29 105 *insured and of all others in the property, the actual cash value of*
30 106 *each item thereof and the amount of loss thereto, all encum-*
31 107 *brances thereon, all other contracts of insurance, whether valid*
32 108 *or not, covering any of said property, any changes in the title,*
33 109 *use, occupation, location, possession or exposures of said prop-*
34 110 *erty since the issuing of this policy, by whom and for what*
35 111 *purpose any building herein described and the several parts*
36 112 *thereof were occupied at the time of loss and whether or not it*
37 113 *then stood on leased ground, and shall furnish a copy of all the*
38 114 *descriptions and schedules in all policies and, if required, verified*
39 115 *plans and specifications of any building, fixtures or machinery*
40 116 *destroyed or damaged. The insured, as often as may be reason-*
41 117 *ably required, shall exhibit to any person designated by this*
42 118 *Company all that remains of any property herein described, and*
43 119 *submit to examinations under oath by any person named by this*
44 120 *Company, and subscribe the same; and, as often as may be*

1 121 reasonably required, shall produce for examination all books of
2 122 account, bills, invoices and other vouchers, or certified copies
3 123 thereof if originals be lost, at such reasonable time and place as
4 124 may be designated by this Company or its representative, and
5 125 shall permit extracts and copies thereof to be made.

6 126 Appraisal. In case the insured and this Company shall
7 127 fail to agree as to the actual cash value or
8 128 the amount of loss, then, on the written demand of either, each
9 129 shall select a competent and disinterested appraiser and notify
10 130 the other of the appraiser selected within twenty days of such
11 131 demand. The appraisers shall first select a competent and dis-
12 132 interested umpire; and failing for fifteen days to agree upon
13 133 such umpire, then, on request of the insured or this Company,
14 134 such umpire shall be selected by a judge of a court of record in
15 135 the state in which the property covered is located. The ap-
16 136 praisers shall then appraise the loss, stating separately actual
17 137 cash value and loss to each item; and, failing to agree, shall
18 138 submit their differences, only, to the umpire. An award in writ-
19 139 ing, so itemized, of any two when filed with this Company shall
20 140 determine the amount of actual cash value and loss. Each
21 141 appraiser shall be paid by the party selecting him and the ex-
22 142 penses of appraisal and umpire shall be paid by the parties
23 143 equally ; *provided, however, if the written demand is made by this*
24 144 *Company, then the insured shall be reimbursed by this Company for*
25 145 *the reasonable cost of the insured's appraiser and the insured's*
26 146 *portion of the cost of the umpire .*

27 147 Company's It shall be optional with this Company to
28 148 options. take all, or any part, of the property at the
29 149 agreed or appraised value, and also to re-
30 150 pair, rebuild or replace the property destroyed or damaged with
31 151 other of like kind and quality within a reasonable time, on giv-
32 152 ing notice of its intention so to do within thirty days after the
33 153 receipt of the proof of loss herein required.

34 154 Abandonment. There can be no abandonment to this Com-
35 155 pany of any property.

36 156 When loss The amount of loss for which this Company
37 157 payable. may be liable shall be payable sixty days
38 158 after proof of loss, as herein provided, is
39 159 received by this Company and ascertainment of the loss is made
40 160 either by agreement between the insured and this Company ex-
41 161 pressed in writing or by the filing with this Company of an
42 162 award as herein provided.

43 163 Suit. No suit or action on this policy for the recov-
44 164 ery of any claim shall be sustainable in any

1 165 court of law or equity unless all the requirements of this policy
2 166 shall have been complied with, and unless commenced within
3 167 two years next after inception of the loss.

4 168 Subrogation. This Company may require from the insured
5 169 an assignment of all right of recovery against
6 170 any party for loss to the extent that payment therefor is made
7 171 by this Company.

8 No change shall be made in the sequence of the words and paragraphs of the standard
9 provisions, conditions, stipulations and agreements prescribed herein, or in the arrangement
10 of the words into lines; and the numbers given the lines in the standard form and the
11 catch words placed at the beginning of the paragraphs shall be retained.

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APPENDIX II

A BILL to amend and reenact § 38.1-367.1 of the Code of Virginia, relating to readable fire insurance policies.

Be it enacted by the General Assembly of Virginia:

1. That § 38.1-367.1 of the Code of Virginia is amended and reenacted as follows:

§ 38.1-367.1. Commission to establish guidelines for filing readable fire insurance policy forms.— The Commission may establish guidelines for the filing of simplified and readable *policies of fire insurance* ~~policy forms which are acceptable for issuance; and, or of fire insurance in combination with other coverages.~~ Notwithstanding the provisions of §§ 38.1-365, 38.1-366 and 38.1-367, an insurance company may issue a ~~fire insurance~~ *simplified and readable policy of fire insurance or of fire insurance in combination with other coverages* which deviates in language ; ~~but not in substance or coverage,~~ from the standard policy form provided for in §§ 38.1-365, 38.1-366 and 38.1-367, provided the deviating policy form is (i) *in each and every respect not less favorable to the insured than such standard policy form,* and (ii) approved by the Commission prior to issuance in accordance with the guidelines hereinabove authorized.

2. That an emergency exists and this Act is in force from its passage.

APPENDIX III

A BILL to amend the Code of Virginia by adding a section numbered 38.1-367.2, relating to standards for content of fire insurance policies.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 38.1-367.2 as follows:

§ 38.1-367.2. Standards for content of fire insurance policies.—A. The Commission may issue, after notice and hearing, rules and regulations establishing standards for the content of any policy of fire insurance or fire insurance in combination with other coverages; or any rider, endorsement or other special or supplemental agreement or provision, for use in connection with any policy of fire insurance or fire insurance in combination with other coverages, any of which is to be issued or delivered in this State on owner-occupied dwellings.

B. Following adoption of the rules and regulations providing for such standards and notwithstanding the provisions of §§ 38.1-365, 38.1-366 and 38.1-367, no insurance company shall issue or renew any policy of fire insurance, or fire insurance in combination with other coverages; or any rider, endorsement, or other special or supplemental agreement or provision for use in connection with any policy of fire insurance or fire insurance in combination with other coverages on owner-occupied dwellings unless the policy form has been filed with the Commission and the Commission has determined that the policy form satisfies such standards for content and is in compliance with other statutory requirements.

C. Nothing herein shall be construed to prevent an insurance company from issuing such policies with coverages, terms and conditions which are broader and more favorable to the insured than the standards relating to content provided by the rules and regulations; provided, however, that the language, style and format of such coverages, terms and conditions must be consistent with the language, style and format of the entire policy form.

APPENDIX IV

HOUSE JOINT RESOLUTION NO.....

Expressing the sense of the General Assembly that the Insurance Commissioner actively encourage insurers to issue readable insurance policies in Virginia.

WHEREAS, insurance of many types, including homeowners, automobile and health insurance, is now essential for many citizens of the Commonwealth; and

WHEREAS, the overwhelming majority of insurance policies are not written or presented in such a way as to be easily understood by Virginia's citizens; and

WHEREAS, the General Assembly believes that insurance companies should promote understanding of the products they sell through the development of policies that are written and presented in such a way as to be more easily understood by the public; and

WHEREAS, many other states have encouraged or required insurance companies to issue policies with newly designed and arranged policy formats and more readable language in order to promote understanding of insurance policies; and

WHEREAS, the laws in Virginia were recently amended to allow insurance companies to issue more readable policies; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That it is the sense of the General Assembly that the State Corporation Commission through the Commissioner of Insurance should actively encourage insurance companies doing business in Virginia to develop and issue more readable insurance policies.

APPENDIX V

HOUSE JOINT RESOLUTION NO....

Continuing the Virginia Advisory Legislative Council study of fire insurance policies.

WHEREAS, House Joint Resolution No. 272 of the nineteen hundred seventy-seven General Assembly, and Senate Joint Resolution No. 41 of the nineteen hundred seventy-eight General Assembly requested the Virginia Advisory Legislative Council to study the composition of fire insurance policies to determine what changes, if any, need be implemented to make such policies more equitable to all concerned; and

WHEREAS, although the Council has made significant progress in its study, additional work remains to be done; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That the Virginia Advisory Legislative Council is directed to continue its study of fire insurance policies for the purpose of studying the replacement value issue, of determining whether basic property insurance provided through the Virginia Property Insurance Association (FAIR Plan) should be made available in all areas of the State, of determining whether the Virginia Property Insurance Association should also provide for the writing of homeowners insurance on owner and tenant occupied dwellings and contents, and of studying any other issues it feels might lead to more equitable fire policies.

The Council shall complete its study and present its findings, conclusions and recommendations to the Governor and the General Assembly not later than November one, nineteen hundred seventy-nine.

All agencies of the Commonwealth are requested to assist the Council in its study.

