

VIRGINIA ACTS OF ASSEMBLY -- 2001 SESSION

CHAPTER 728

An Act to amend and reenact § 38.2-2226 of the Code of Virginia, relating to civil actions; insurer's reservation of rights.

[H 2424]

Approved March 26, 2001

Be it enacted by the General Assembly of Virginia:

1. That § 38.2-2226 of the Code of Virginia is amended and reenacted as follows:

§ 38.2-2226. Insurer to give notice to claimant of intention to rely on certain defenses and of execution of nonwaiver of rights agreement.

Whenever any insurer on a policy of liability insurance discovers a breach of the terms or conditions of the insurance contract by the insured, the insurer shall notify the claimant or the claimant's counsel of the breach. Notification shall be given within forty-five days after discovery by the insurer of the breach or of the claim, whichever is later. Whenever, on account of such breach, a nonwaiver of rights agreement is executed by the insurer and the insured, or a reservation of rights letter is sent by the insurer to the insured, notice of such action shall be given to the claimant or the claimant's counsel within forty-five days after that agreement is executed or the letter is sent, or after notice of the claim is received, whichever is later. Failure to give the notice within forty-five days will result in a waiver of the defense based on such breach to the extent of the claim by operation of law.

Notwithstanding the provisions of this section, in any claim in which a civil action has been filed by the claimant, the insurer shall give notice of reservation of rights in writing to the claimant, or if the claimant is represented by counsel, to claimant's counsel not less than thirty days prior to the date set for trial of the matter. The court, upon motion of the insurer and for good cause shown, may allow such notice to be given fewer than thirty days prior to the trial date. Failure to give the notice within thirty days of the trial date, or such shorter period as the court may have allowed, shall result in a waiver of the defense based on such breach to the extent of the claim by operation of law.