

VIRGINIA ACTS OF ASSEMBLY -- 2002 SESSION

CHAPTER 145

An Act to amend and reenact §§ 38.2-1902, 38.2-1904, 38.2-2001, 38.2-2005, and 38.2-3001 of the Code of Virginia, relating to uninsured motorist coverage; rates and refunds.

[S 151]

Approved March 22, 2002

Be it enacted by the General Assembly of Virginia:

1. That §§ 38.2-1902, 38.2-1904, 38.2-2001, 38.2-2005, and 38.2-3001 of the Code of Virginia are amended and reenacted as follows:

§ 38.2-1902. Scope of chapter.

A. Except as provided in subsection B of this section, this chapter applies to the classes of insurance defined in §§ 38.2-110 through 38.2-122, 38.2-124 through 38.2-128 and 38.2-130 through 38.2-133.

B. This chapter does not apply to:

1. Insurance written through the Virginia Workers' Compensation Plan pursuant to Chapter 20 (§ 38.2-2000 et seq.) of this title;

2. Insurance on a specific risk as provided in § 38.2-1920;

3. Reinsurance, other than joint reinsurance, to the extent stated in § 38.2-1915;

4. Life insurance as defined in § 38.2-102;

5. Annuities as defined in §§ 38.2-106 and 38.2-107;

6. Accident and sickness insurance as defined in § 38.2-109;

7. Title insurance as defined in § 38.2-123;

8. Insurance of vessels or craft used primarily in a trade or business, their cargoes, marine builders' risks and marine protection and indemnity;

9. Insurance against loss of or damage to hulls of aircraft, including their accessories and equipment, or against liability, other than workers' compensation and employers' liability, arising out of the ownership, maintenance or use of aircraft;

10. Automobile bodily injury and property damage liability insurance issued to: (i) any motor carrier of property who is required to file such insurance with the Department of Motor Vehicles pursuant to § 46.2-2028 or any amendment to that section; or (ii) 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 to 49 U.S.C.A. § 315, to file such insurance with the Interstate Commerce Commission;

~~11. Uninsured motorist coverage required by subsection A of § 38.2-2206;~~

~~12. Insurance written through the Virginia Automobile Insurance Plan. However, § 38.2-1905 shall apply to insurance written through the Plan;~~

~~13. Insurance provided pursuant to Chapter 27 (§ 38.2-2700 et seq.) of this title;~~

~~14. Home protection contracts as defined by § 38.2-2600 and their rates until such time as the Commission determines there is sufficient competition in the industry as provided by § 38.2-2608.~~

C. This chapter shall not apply to any class of insurance written (i) by any mutual assessment property and casualty insurance company organized and operating under the laws of this Commonwealth and doing business only in this Commonwealth or (ii) by any mutual insurance company or association organized under the laws of this Commonwealth, conducting business only in this Commonwealth, and issuing only policies providing for perpetual insurance.

§ 38.2-1904. Rate standards.

A. Rates for the classes of insurance to which this chapter applies shall not be excessive, inadequate or unfairly discriminatory. All rates and all changes and amendments to rates to which this chapter applies for use in this Commonwealth shall consider loss experience and other factors within Virginia if relevant and actuarially sound; provided, other data, including countrywide, regional or other state data, may be considered where such data is relevant and where a sound actuarial basis exists for considering data other than Virginia-specific data.

1. No rate shall be held to be excessive unless it is unreasonably high for the insurance provided and a reasonable degree of competition does not exist in the area with respect to the classification to which the rate applies.

2. No rate shall be held inadequate unless it is unreasonably low for the insurance provided and (i) continued use of it would endanger solvency of the insurer or (ii) use of the rate by the insurer has or, if continued, will have the effect of destroying competition or creating a monopoly.

3. No rate shall be unfairly discriminatory if a different rate is charged for the same coverage and the rate differential (i) is based on sound actuarial principles or (ii) is related to actual or reasonably anticipated experience.

B. 1. In determining whether rates comply with the standards of subsection A of this section,

separate consideration shall be given to (i) past and prospective loss experience within and outside this Commonwealth, (ii) conflagration or catastrophe hazards, (iii) a reasonable margin for underwriting profit and contingencies, (iv) dividends, savings or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members or subscribers, (v) past and prospective expenses both countrywide and those specifically applicable to this Commonwealth, (vi) the loss reserving practices, standards and procedures utilized by the insurer, (vii) investment income earned or realized by insurers from their unearned premium and loss reserve and the Commission may give separate consideration to investment income earned on surplus funds, and (viii) all other relevant factors within and outside this Commonwealth. When actual experience or data does not exist, the Commission may consider estimates.

2. 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.

3. In the case of workers' compensation insurance rates for volunteer firefighters or volunteer lifesaving or volunteer rescue squad members, the rates shall be calculated based upon the combined experience of both volunteer firefighters or volunteer lifesaving or volunteer rescue squad members and paid firefighters or paid lifesaving or paid rescue squad members, so that the resulting rate is the same for both volunteer and paid members, but in no event shall resulting premiums be less than forty dollars per year for any volunteer firefighter or rescue squad member.

4. *In the case of uninsured motorist coverage required by subsection A of § 38.2-2206, consideration shall be given to all sums distributed by the Commission from the Uninsured Motorists Fund in accordance with the provisions of Chapter 30 (§ 38.2-3000 et seq.) of this title.*

C. For the classes of insurance to which this chapter applies, including insurance against contingent, consequential and indirect losses as defined in § 38.2-133 (i) 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 for any class of insurance, or with respect to any subdivision or combination of insurance for which separate expense provisions are applicable, and (ii) 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 that establish standards for measuring variations in hazards, expense provisions, or both. The standards may measure any difference between risks that can be demonstrated to have a probable effect upon losses or expenses. Notwithstanding any other provision of this subsection, except as permitted by § 38.2-1908, each member of a rate service organization shall use the uniform classification system, uniform experience rating plan, and uniform statistical plan of its designated rate service organization in the provision of insurance defined in § 38.2-119.

D. No insurer shall use any information pertaining to any motor vehicle conviction or accident to produce increased or surcharged rates above their filed manual rates for individual risks for a period longer than thirty-six months. This period shall begin no later than twelve months after the date of the conviction or accident.

E. Each authorized insurer subject to the provisions of this chapter may file with the Commission an expense reduction plan that permits variations in expense provisions. Such filing may contain provisions permitting agents to reduce their commission resulting in an appropriate reduction in premium. Nothing in this section shall be construed to require an agent to reduce a commission, nor may an insurer unreasonably refuse to reduce a premium due to a commission reduction as permitted by its filed expense reduction plan.

§ 38.2-2001. Insurance to which chapter applies.

This chapter applies only to (i) insurance written through the Virginia Workers' Compensation Insurance Plan, (ii) the coverages provided in the Virginia Automobile Insurance Plan, (iii) the coverages provided pursuant to Chapter 27 (§ 38.2-2700 et seq.) of this title, (iv) ~~uninsured motorist coverage as required by subsection A of § 38.2-2206,~~ (v) home protection contracts as defined by § 38.2-2600, and ~~(vi)~~ (v) policies and endorsements of credit involuntary unemployment insurance, as defined in § 38.2-122.1, and policies and endorsements of credit property insurance, as defined in § 38.2-122.2, delivered or issued for delivery in this Commonwealth, and certificates of credit involuntary unemployment insurance and certificates of credit property insurance delivered or issued for delivery in this Commonwealth where the group policy is delivered in another state.

§ 38.2-2005. Provisions governing making of rates.

A. Rates for the classes of insurance to which this chapter applies shall not be excessive, inadequate or unfairly discriminatory. All rates and all changes and amendments to rates to which this chapter applies for use in this Commonwealth shall consider loss experience and other factors within Virginia if relevant and actuarially sound; however, other data, including countrywide, regional or other state data, may be considered where such data is relevant and where a sound actuarial basis exists for considering data other than Virginia-specific data.

B. 1. In making rates for the classes of insurance to which this chapter applies, separate consideration shall be given to (i) past and prospective loss experience within and outside this Commonwealth, (ii) conflagration or catastrophe hazards, (iii) a reasonable margin for underwriting

profit and contingencies, (iv) dividends, savings or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members or subscribers, (v) past and prospective expenses both countrywide and those specifically applicable to this Commonwealth, (vi) investment income earned or realized by insurers from their unearned premium and loss reserve and the Commission may give separate consideration to investment income earned on surplus funds, (vii) the loss reserving practices, standards and procedures utilized by the insurer, and (viii) all other relevant factors within and outside this Commonwealth. When actual experience or data does not exist, the Commission may consider estimates.

2. 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.

3. ~~In the case of uninsured motorist coverage required by subsection A of § 38.2-2206, consideration shall be given to all sums distributed by the Commission from the Uninsured Motorists Fund in accordance with the provisions of Chapter 30 of this title.~~

In the case of workers' compensation insurance rates for volunteer firefighters or volunteer lifesaving or volunteer rescue squad members written through the Virginia Worker's Compensation Insurance Plan, the rates shall be calculated based upon the combined experience of both volunteer firefighters or volunteer lifesaving or volunteer rescue squad members and paid firefighters or paid lifesaving or paid rescue squad members, so that the resulting rate is the same for both volunteer and paid members, but in no event shall resulting premiums be less than forty dollars per year for any volunteer firefighter or rescue squad member.

C. For the classes of insurance to which this chapter applies (i) 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 for any class of insurance, or for any subdivision or combination of insurance for which separate expense provisions apply, and (ii) 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 that establish standards for measuring variations in hazards, expense provisions, or both. The standards may measure any difference among risks that can be demonstrated to have a probable effect upon losses or expenses.

D. All rates, rating schedules or rating plans and every manual of classifications, rules and rates, including every modification thereof, approved by the Commission under this chapter, shall be used until a change is approved by the Commission.

§ 38.2-3001. Distribution to insurers; records of loss experience as prerequisite to payment.

The Commission shall distribute moneys annually from the Fund among the several insurers writing motor vehicle bodily injury and property damage liability insurance on motor vehicles registered in this Commonwealth. Moneys shall be distributed in the proportion that each insurer's ~~premium income for the basic uninsured motorists limits coverage reported written car years~~ bears to the total ~~premium income for basic uninsured motorists limits coverage written number of written car years reported for the preceding year by all insurers in this Commonwealth during the preceding year.~~ Premium income shall be gross premiums less cancellation and return premiums for coverage required by subsection A of § 38.2-2206 who have elected to participate in the distribution of the Fund. For purposes of this section, "written car years" means the number of motor vehicles insured by policies providing uninsured motorist coverage as required by subsection A of § 38.2-2206 during a twelve-month period. Only insurers that maintain records satisfactory to the Commission shall receive any payment from the Fund. Records shall be considered satisfactory if they adequately disclose the loss experience for the coverage required by subsection A of § 38.2-2206.