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SENATE BILL NO. 971

Offered January 10, 2007

Prefiled January 9, 2007

A BILL to amend and reenact § 2.2-1839 of the Code of Virginia, as it is currently effective and as it may become effective, relating to the Department of Treasury; Division of Risk Management; supplemental liability coverage for city and county sheriff's departments.

Patrons—Howell, Herring and Puller; Delegates: Amundson, Bulova, Callahan, Caputo, Marsden, Moran, Plum, Rust, Scott, J.M., Sickles and Watts

Referred to Committee on General Laws and Technology

Be it enacted by the General Assembly of Virginia:

1. That § 2.2-1839 of the Code of Virginia, as it is currently effective and as it may become effective, is amended and reenacted as follows:

§ 2.2-1839. (Effective until July 1, 2008 - see Editor's note) Risk management plans administered by the Department of the Treasury's Risk Management Division for political subdivisions, constitutional officers, etc.

A. The Division shall establish one or more risk management plans specifying the terms and conditions for coverage, subject to the approval of the Governor, and which plans may be purchased insurance, self-insurance or a combination of self-insurance and purchased insurance to provide protection against liability imposed by law for damages and against incidental medical payments resulting from any claim made against any county, city or town; authority, board, or commission; sanitation, soil and water, planning or other district; public service corporation owned, operated or controlled by a locality or local government authority; constitutional officer; state court-appointed attorney; any attorney for any claim arising out of the provision of pro bono legal services for custody and visitation to an eligible indigent person under a program approved by the Supreme Court of Virginia or the Virginia State Bar; any receiver for an attorney's practice appointed under § 54.1-3900.01 or 54.1-3936; affiliate or foundation of a state department, agency or institution; any clinic that is organized in whole or primarily for the delivery of health care services without charge; any local chapter or program of the Meals on Wheels Association of America or any area agency on aging, providing meal and nutritional services to persons who are elderly, homebound, or disabled; any individual serving as a guardian or limited guardian as defined in § 37.2-1000 for any consumer of a community services board or behavioral health authority or any patient or resident of a state facility operated by the Department of Mental Health, Mental Retardation and Substance Abuse Services; or the officers, agents or employees of any of the foregoing for acts or omissions of any nature while in an authorized governmental or proprietary capacity and in the course and scope of employment or authorization.

For the purposes of this section, "delivery of health care services without charge" shall be deemed to include the delivery of dental, medical or other health services when a reasonable minimum fee is charged to cover administrative costs.

B. Participation in the risk management plan shall be voluntary and shall be approved by the participant's respective governing body or by the State Compensation Board in the case of constitutional officers, by the office of the Executive Secretary of the Virginia Supreme Court in the case of state court-appointed attorneys, including attorneys appointed to serve as receivers under § 54.1-3900.01 or 54.1-3936, or attorneys under Virginia Supreme Court or Virginia State Bar approved programs, by the Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse Services for any individual serving as a guardian or limited guardian for any patient or resident of a state facility operated by such Department or by the executive director of a community services board or behavioral health authority for any individual serving as a guardian or limited guardian for a consumer of such board or authority, and by the Division. Upon such approval, the Division shall assume sole responsibility for plan management, compliance, or removal. The Virginia Supreme Court shall pay the cost for coverage of eligible persons performing services in approved programs of the Virginia Supreme Court or the Virginia State Bar. The Department of Mental Health, Mental Retardation and Substance Abuse Services shall be responsible for paying the cost of coverage for eligible persons performing services as a guardian or limited guardian for any patient or resident of a state facility operated by the Department. The applicable community services board or behavioral health authority shall be responsible for paying the cost of coverage for eligible persons performing services as a guardian or limited guardian for consumers of such board or authority.

C. The Division shall provide for the legal defense of participating entities and shall reserve the right

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58 to settle or defend claims presented under the plan. All prejudgment settlements shall be approved in
59 advance by the Division.

60 D. The risk management plan established pursuant to this section shall provide for the establishment
61 of a trust fund for the payment of claims covered under such plan. The funds shall be invested in the
62 manner provided in § 2.2-1806 and interest shall be added to the fund as earned.

63 The trust fund shall also provide for payment of legal defense costs, actuarial costs, administrative
64 costs, contractual costs and all other expenses related to the administration of such plan.

65 E. The Division shall, in its sole discretion, set the premium and administrative cost to be paid to it
66 for providing a risk management plan established pursuant to this section. The premiums and
67 administrative costs set by the Division shall be payable in the amounts at the time and in the manner
68 that the Division in its sole discretion shall require. The premiums and administrative costs need not be
69 uniform among participants, but shall be set so as to best ensure the financial stability of the plan.

70 *F. Notwithstanding any provision to the contrary, a sheriff's department of any city or county shall*
71 *not be precluded from securing supplemental liability insurance coverage beyond the coverage provided*
72 *by the Division pursuant to this section.*

73 § 2.2-1839. (Contingently effective July 1, 2008 - see Editor's note) Risk management plans
74 administered by the Department of the Treasury's Risk Management Division for political subdivisions,
75 constitutional officers, etc.

76 A. The Division shall establish one or more risk management plans specifying the terms and
77 conditions for coverage, subject to the approval of the Governor, and which plans may be purchased
78 insurance, self-insurance or a combination of self-insurance and purchased insurance to provide
79 protection against liability imposed by law for damages and against incidental medical payments
80 resulting from any claim made against any county, city or town; authority, board, or commission;
81 sanitation, soil and water, planning or other district; public service corporation owned, operated or
82 controlled by a locality or local government authority; constitutional officer; state court-appointed
83 attorney; any attorney for any claim arising out of the provision of pro bono legal services for custody
84 and visitation to an eligible indigent person under a program approved by the Supreme Court of Virginia
85 or the Virginia State Bar; any receiver for an attorney's practice appointed under § 54.1-3900.01 or
86 54.1-3936; affiliate or foundation of a state department, agency or institution; any clinic that is
87 organized in whole or primarily for the delivery of health care services without charge; any local chapter
88 or program of the Meals on Wheels Association of America or any area agency on aging, providing
89 meal and nutritional services to persons who are elderly, homebound, or disabled; any individual serving
90 as a guardian or limited guardian as defined in § 37.2-1000 for any consumer of a community services
91 board or behavioral health authority or any patient or resident of a state facility operated by the
92 Department of Mental Health, Mental Retardation and Substance Abuse Services; any participant who
93 satisfies the requirements of § 2.2-1839.1; or the officers, agents or employees of any of the foregoing
94 for acts or omissions of any nature while in an authorized governmental or proprietary capacity and in
95 the course and scope of employment or authorization.

96 For the purposes of this section, "delivery of health care services without charge" shall be deemed to
97 include the delivery of dental, medical or other health services when a reasonable minimum fee is
98 charged to cover administrative costs.

99 B. Participation in the risk management plans shall be voluntary and shall be approved by both the
100 participant's respective governing body or by the State Compensation Board in the case of constitutional
101 officers, by the office of the Executive Secretary of the Virginia Supreme Court in the case of state
102 court-appointed attorneys, including attorneys appointed to serve as receivers under § 54.1-3900.01 or
103 54.1-3936, or attorneys under Virginia Supreme Court or Virginia State Bar approved programs, by the
104 Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse Services
105 for any individual serving as a guardian or limited guardian for any patient or resident of a state facility
106 operated by such Department or by the executive director of a community services board or behavioral
107 health authority for any individual serving as a guardian or limited guardian for a consumer of such
108 board or authority, and by the Division. Those participants under § 2.2-1839.1 shall not be required to
109 obtain approval from any entity other than the Division. Upon such approval, the Division shall assume
110 sole responsibility for plan management, compliance, or removal. The Virginia Supreme Court shall pay
111 the cost for coverage of eligible persons performing services in approved programs of the Virginia
112 Supreme Court or the Virginia State Bar. The Department of Mental Health, Mental Retardation and
113 Substance Abuse Services shall be responsible for paying the cost of coverage for eligible persons
114 performing services as a guardian or limited guardian for any patient or resident of a state facility
115 operated by the Department. The applicable community services board or behavioral health authority
116 shall be responsible for paying the cost of coverage for eligible persons performing services as a
117 guardian or limited guardian for consumers of such board or authority.

118 C. The Division shall provide for the legal defense of participants and shall reserve the right to settle
119 or defend claims presented under the plan. All prejudgment settlements shall be approved in advance by

the Division.

D. The risk management plans established pursuant to this section shall provide for the establishment of trust funds for the payment of claims covered under such plans. The funds shall be invested in the manner provided in § 2.2-1806 and interest shall be added to the fund as earned.

Trust funds shall also provide for payment of legal defense costs, actuarial costs, administrative costs, contractual costs and all other expenses related to the administration of such plans.

E. The Division shall, in its sole discretion, set the premium, deductible, and administrative cost to be paid to it for providing risk management plans established pursuant to this section. The premiums and administrative costs set by the Division shall be payable in the amounts at the time and in the manner that the Division in its sole discretion shall require. The premiums, deductibles, and administrative costs need not be uniform among participants, but shall be set so as to best ensure the financial stability of the plans.

F. Notwithstanding any provision to the contrary, a sheriff's department of any city or county shall not be precluded from securing supplemental liability insurance coverage beyond the coverage provided by the Division pursuant to this section.