

LD3235649

SENATE BILL NO. 1104

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Commerce and Labor
on February 6, 1995)

(Patron Prior to Substitute—Senator Earley)

A BILL to amend and reenact § 38.2-2204 of the Code of Virginia, relating to liability insurance for state employees using automobiles in government business.

Be it enacted by the General Assembly of Virginia:

1. That § 38.2-2204 of the Code of Virginia is amended and reenacted as follows:

§ 38.2-2204. Liability insurance on motor vehicles, aircraft and watercraft; standard provisions; "omnibus clause."

A. No policy or contract of bodily injury or property damage liability insurance, covering liability arising from the ownership, maintenance, or use of any motor vehicle, aircraft, or private pleasure watercraft, shall be issued or delivered in this Commonwealth to the owner of such vehicle, aircraft or watercraft, or shall be issued or delivered by any insurer licensed in this Commonwealth upon any motor vehicle, aircraft, or private pleasure watercraft that is principally garaged, docked, or used in this Commonwealth, unless the policy contains a provision insuring the named insured, and any other person using or responsible for the use of the motor vehicle, aircraft, or private pleasure watercraft with the expressed or implied consent of the named insured, against liability for death or injury sustained, or loss or damage incurred within the coverage of the policy or contract as a result of negligence in the operation or use of such vehicle, aircraft, or watercraft by the named insured or by any such person. Each such policy or contract of liability insurance, or endorsement to the policy or contract, insuring private passenger automobiles, aircraft, or private pleasure watercraft principally garaged, docked, or used in this Commonwealth, that has as the named insured an individual or husband and wife and that includes, with respect to any liability insurance provided by the policy, contract or endorsement for use of a nonowned automobile, aircraft or private pleasure watercraft, any provision requiring permission or consent of the owner of such automobile, aircraft, or private pleasure watercraft for the insurance to apply, shall be construed to include permission or consent of the custodian in the provision requiring permission or consent of the owner.

B. For aircraft liability insurance, such policy or contract may contain the exclusions listed in § 38.2-2227. Notwithstanding the provisions of this section or any other provisions of law, no policy or contract shall require pilot experience greater than that prescribed by the Federal Aviation Administration, except for pilots operating air taxis, or pilots operating aircraft applying chemicals, seed, or fertilizer.

C. No policy or contract of bodily injury or property damage liability insurance relating to the ownership, maintenance, or use of a motor vehicle shall be issued or delivered in this Commonwealth to the owner of such vehicle or shall be issued or delivered by an insurer licensed in this Commonwealth upon any motor vehicle principally garaged or used in this Commonwealth without an endorsement or provision insuring the named insured, and any other person using or responsible for the use of the motor vehicle with the expressed or implied consent of the named insured, against liability for death or injury sustained, or loss or damage incurred within the coverage of the policy or contract as a result of negligence in the operation or use of the motor vehicle by the named insured or by any other such person. This provision shall apply notwithstanding the failure or refusal of the named insured or such other person to cooperate with the insurer under the terms of the policy. If the failure or refusal to cooperate prejudices the insurer in the defense of an action for damages arising from the operation or use of such insured motor vehicle, then the endorsement or provision shall be void. If an insurer has actual notice of a motion for judgment or complaint having been served on an insured, the mere failure of the insured to turn the motion or complaint over to the insurer shall not be a defense to the insurer, nor void the endorsement or provision, nor in any way relieve the insurer of its obligations to the insured, provided the insured otherwise cooperates and in no way prejudices the insurer.

Where the insurer has elected to provide a defense to its insured under such circumstances and files responsive pleadings in the name of its insured, the insured shall not be subject to sanctions for failure to comply with discovery pursuant to Part Four of the Rules of the Supreme Court of Virginia unless it can be shown that the suit papers actually reached the insured, and that the insurer has failed after exercising due diligence to locate its insured, and as long as the insurer provides such information in response to discovery as it can without the assistance of the insured.

D. Any endorsement, provision or rider attached to or included in any such policy of insurance which purports or seeks to limit or reduce the coverage afforded by the provisions required by this section shall be void, except an insurer may exclude such coverage as is afforded by this section, where

60 such coverage would inure to the benefit of the United States Government or any agency or subdivision
61 thereof under the provisions of the Federal Tort Claims Act, the Federal Drivers Act and Public Law
62 86-654 District of Columbia Employee Non-Liability Act, *or to the benefit of the Commonwealth under*
63 *the provisions of the Virginia Tort Claims Act (§ 8.01-195.1 et seq.) and the self-insurance plan*
64 *established by the Department of General Services pursuant to § 2.1-526.8.*