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HOUSE BILL NO. 2535

AMENDMENT IN THE NATURE OF A SUBSTITUTE
 (Proposed by the Senate Committee on Commerce and Labor
 on February 17, 2003)

(Patron Prior to Substitute—Delegate Byron)

A BILL to amend and reenact §§ 38.2-2114 and 38.2-2212 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 21 of Title 38.2 a section numbered 38.2-2126 and in Chapter 22 of Title 38.2 a section numbered 38.2-2234, relating to fire and liability insurance policies; use of credit information.

Be it enacted by the General Assembly of Virginia:

1. That §§ 38.2-2114 and 38.2-2212 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding in Chapter 21 of Title 38.2 a section numbered 38.2-2126 and by adding in Chapter 22 of Title 38.2 a section numbered 38.2-2234, as follows:

§ 38.2-2114. Grounds and procedure for termination of policy; contents of notice; review by Commissioner; exceptions; immunity from liability.

A. Notwithstanding the provisions of § 38.2-2105, no policy or contract written to insure owner-occupied dwellings shall be canceled by an insurer unless written notice is mailed or delivered to the named insured at the address stated in the policy, and cancellation is for one of the following reasons:

1. Failure to pay the premium when due;
2. Conviction of a crime arising out of acts increasing the probability that a peril insured against will occur;
3. Discovery of fraud or material misrepresentation;
4. Willful or reckless acts or omissions increasing the probability that a peril insured against will occur as determined from a physical inspection of the insured premises; or
5. Physical changes in the property which result in the property becoming uninsurable as determined from a physical inspection of the insured premises.

B. No policy or contract written to insure owner-occupied dwellings shall be terminated by an insurer by refusal to renew except at the expiration of the stated policy period or term and unless the insurer or its agent acting on behalf of the insurer mails or delivers to the named insured, at the address stated in the policy, written notice of the insurer's refusal to renew the policy or contract.

C. A written notice of cancellation of or refusal to renew a policy or contract written to insure owner-occupied dwellings shall:

1. State the date that the insurer proposes to terminate the policy or contract, which shall be at least thirty days after mailing or delivering to the named insured the notice of cancellation or refusal to renew. However, when the policy is being terminated for the reason set forth in subdivision 1 of subsection A of this section, the date that the insurer proposes to terminate the policy may be less than thirty days but at least ten days from the date of mailing or delivery;

2. State the specific reason for terminating the policy or contract and provide for the notification required by the provisions of §§ 38.2-608 and 38.2-609 and subsection B of § 38.2-610. However, those notification requirements shall not apply when the policy is being canceled or not renewed for the reason set forth in subdivision 1 of subsection A of this section;

3. Advise the insured that within ten days of receipt of the notice of termination he may request in writing that the Commissioner review the action of the insurer in terminating the policy or contract;

4. Advise the insured of his possible eligibility for fire insurance coverage through the Virginia Property Insurance Association; and

5. Be in a type size authorized by § 38.2-311.

D. Within ten days of receipt of the notice of termination any insured or his attorney shall be entitled to request in writing to the Commissioner that he review the action of the insurer in terminating a policy or contract written to insure owner-occupied dwellings. Upon receipt of the request, the Commissioner shall promptly initiate a review to determine whether the insurer's cancellation or refusal to renew complies with the requirements of this section and of § 38.2-2113, if sent by mail. The policy shall remain in full force and effect during the pendency of the review by the Commissioner except where the cancellation or refusal to renew is for reason of nonpayment of premium, in which case the policy shall terminate as of the date stated in the notice. Where the Commissioner finds from the review that the cancellation or refusal to renew has not complied with the requirements of this section or of § 38.2-2113, if sent by mail, he shall immediately notify the insurer, the insured, and any other person to whom notice of cancellation or refusal to renew was required to be given by the terms of the policy that the cancellation or refusal to renew is not effective. Nothing in this section authorizes the

SENATE SUBSTITUTE

HB2535S1

60 Commissioner to substitute his judgment as to underwriting for that of the insurer.

61 E. Nothing in this section shall apply:

62 1. To any policy written to insure owner-occupied dwellings that has been in effect for less than
63 ninety days when the notice of termination is mailed or delivered to the insured, unless it is a renewal
64 policy;

65 2. If the insurer or its agent acting on behalf of the insurer has manifested its willingness to renew
66 by issuing or offering to issue a renewal policy, certificate or other evidence of renewal, or has
67 otherwise manifested its willingness to renew in writing to the insured. The written manifestation shall
68 include the name of a proposed insurer, the expiration date of the policy, the type of insurance coverage
69 and information regarding the estimated renewal premium;

70 3. If the named insured or his duly constituted attorney-in-fact has notified the insurer or its agent
71 orally, or in writing, if the insurer requires such notification to be in writing, that he wishes the policy
72 to be canceled, or that he does not wish the policy to be renewed, or if, prior to the date of expiration,
73 he fails to accept the offer of the insurer to renew the policy; or

74 4. To any contract or policy written through the Virginia Property Insurance Association or any
75 residual market facility established pursuant to Chapter 27 (§ 38.2-2700 et seq.) of this title.

76 F. Each insurer shall maintain, for at least one year, records of cancellation and refusal to renew and
77 copies of every notice or statement referred to in subsection E of this section that it sends to any of its
78 insureds.

79 G. There shall be no liability on the part of and no cause of action of any nature shall arise against
80 the Commissioner or his subordinates; any insurer, its authorized representative, its agents, or its
81 employees; or any firm, person or corporation furnishing to the insurer information as to reasons for
82 cancellation or refusal to renew, for any statement made by any of them in complying with this section
83 or for providing information pertaining to the cancellation or refusal to renew.

84 H. Nothing in this section requires an insurer to renew a policy written to insure owner-occupied
85 dwellings, if the insured does not conform to the occupational or membership requirements of an insurer
86 who limits its writings to an occupation or membership of an organization.

87 I. No insurer or agent shall refuse to renew a policy written to insure an owner-occupied dwelling,
88 solely because of any one or more of the following factors:

- 89 1. Age;
90 2. Sex;
91 3. Residence;
92 4. Race;
93 5. Color;
94 6. Creed;
95 7. National origin;
96 8. Ancestry;
97 9. Marital status;

98 10. Lawful occupation, including the military service; however, nothing in this subsection shall
99 require any insurer to renew a policy for an insured where the insured's occupation has changed so as to
100 increase materially the risk;

101 11. Credit information contained in a "consumer report," as defined in the federal Fair Credit
102 Reporting Act, 15 U.S.C. § 1681 et seq., bearing on a natural person's creditworthiness, credit standing
103 or credit capacity; ~~unless, in addition to any other requirements that may apply, the insurer includes in~~
104 ~~the notice required by this section the following statement or a statement substantially similar to it:~~
105 ~~"This nonrenewal is based on information contained in a consumer report relating to you and/or~~
106 ~~someone else who resides in your household." The notice shall also contain: (i) the name and address of~~
107 ~~an institutional source from whom the insurer obtained the credit information and (ii) a statement~~
108 ~~advising the insured that, if the insured wishes to inquire further about the credit information on which~~
109 ~~the nonrenewal is based and obtain a free copy of the "consumer report," the insured may do so by~~
110 ~~mailing a written request to the insurer, or such other party as the insurer shall identify in the notice, no~~
111 ~~more than ten days after the date on which the notice of nonrenewal was mailed to the insured. If the~~
112 ~~insured submits such written notification, the nonrenewal shall not become effective until thirty days~~
113 ~~after the accuracy of the credit information, which the insured has questioned and on which the~~
114 ~~nonrenewal was based, has been verified and communicated to the insured. Such verification shall be~~
115 ~~deemed to have been made upon completion of the investigation of the credit information which the~~
116 ~~insured has questioned and on which the nonrenewal was based. The insured must cooperate in the~~
117 ~~investigation of the credit information, including responding to any communication submitted by, or on~~
118 ~~behalf of, the insurer no more than ten days after the date on which such communication was mailed to~~
119 ~~the insured. If the insured fails to cooperate in the investigation of the credit information, the insurer~~
120 ~~may, after providing fifteen days' written notice to the insured, terminate such investigation and~~
121 ~~nonrenew the policy. An insurer may require that an insured submit written documentation authorizing~~

the insurer, or such other party as the insurer shall identify, to perform the investigation of the credit information. The insured shall be obligated to pay any pro rata premium due for insurance provided during the period in which the investigation of the credit information is pending up to the date on which the policy nonrenewal becomes effective. Although the obligations imposed upon an insurer by this subdivision may be satisfied by a third party who agrees, and is authorized, to act on behalf of the insurer, the insurer shall remain responsible for compliance with the obligations imposed by this subdivision. If credit information is used, in part, as the basis for the nonrenewal, such credit information shall be based on a consumer report procured within 120 days from the effective date of the nonrenewal; or

12. Any claim resulting primarily from natural causes.

Nothing in this section prohibits any insurer from setting rates in accordance with relevant actuarial data.

J. No insurer shall cancel or refuse to renew a policy written to insure an owner-occupied dwelling because an insured under the policy is a foster parent and foster children reside at the insured dwelling.

§ 38.2-2126. Insurance credit score disclosure; use of credit information.

A. Any insurer issuing or delivering a policy written to insure an owner-occupied dwelling or the personal property of a tenant's residential property risk that uses credit information contained in a consumer report for underwriting, tier placement or rating an applicant or insured, shall meet the following requirements:

1. Disclose, either on the insurance application or at the time the insurance application is taken (i) that it shall obtain credit information in connection with such application; (ii) that the insured may request that his credit information be updated; and (iii) that, if the insured questions the accuracy of the credit information, the insurer will, upon request of the insured, reevaluate the insured based on corrected credit information from a consumer reporting agency. The disclosure may be made by the insurer or its agent. Such disclosure shall be either written or provided to an applicant in the same medium as the application for insurance. The insurer need not provide the disclosure required under this subsection to any insured on a renewal policy if such insured has previously been provided a disclosure. Use of the following example disclosure constitutes compliance with this subsection: "In connection with this application for insurance, we shall review your credit report or obtain or use an insurance credit score based on the information contained in that credit report. We may use a third party in connection with the development of your insurance credit score. You may request that your credit information be updated and if you question the accuracy of the credit information, we will, upon your request, reevaluate you based on corrected credit information from a consumer reporting agency."

2. If an insurer takes an adverse action, based in whole or in part, upon credit information, the insurer must provide notification to the applicant or insured that the adverse action was based, in whole or in part, on credit information. Such notification shall also either include a statement advising the applicant or insured of the primary factors or characteristics that were used as the basis for the adverse action, or notify the applicant or insured that he may request such information. For the purposes of this section, adverse action means a denial, nonrenewal or cancellation of, an increase in any charge for or refusal to apply a discount, or placement in a less favorable tier, or a reduction or other adverse or unfavorable change in the terms of coverage or amount of, any insurance, existing or applied for, in connection with underwriting, tier placement or rating. Adverse action includes, but is not limited to, circumstances where the applicant or insured (i) did not receive the company's most favorable rate, (ii) was not placed in the company's best tier, and (iii) when there are multiple companies available within a group of insurers, the applicant or insured did not receive coverage in the group's most favorably priced company. In the case of renewals, the circumstances listed in clauses (i), (ii), and (iii) shall not be deemed adverse actions if, due to the insured's credit information, the insured is not receiving a less favorable rate or placed in a less favorable tier or company than during the policy period immediately preceding renewal.

B. If an insurer uses credit information from a consumer report for tier placement or rating of its renewal business for a policy insuring an owner-occupied dwelling or the personal property of a tenant's residential property risk, the insurer shall be required to update the credit information at least once every three years, provided, however, that the insurer shall be required to update an insured's credit information within the three-year period if requested by the insured. If an update request is made by the insured at least 45 days prior to the end of the policy term, any adjustment to the premium required by the update of the insured's credit information shall take effect at the first renewal following the request for update of the insured's credit information. If an update request is made by the insured within 45 days of the end of the policy term, the insurer shall have the option of applying any adjustment to the premium required by the update of the insured's credit information to the first renewal or the second renewal following the request for update of the insured's credit information. An insurer need not update the credit information more frequently than once every policy term. Notwithstanding the

183 requirements of this subsection, no insurer need obtain updated credit information if the insured has the
184 most favorably priced tier or rate based on his credit information.

185 C. Notwithstanding the provisions of subdivision A 3 of § 38.2-1904, if an insurer issuing or
186 delivering a policy to insure an owner-occupied dwelling or the personal property of a tenant's
187 residential property risk is unable to obtain credit information from a consumer report or when an
188 insured or applicant has insufficient credit to produce an insurance credit score, the insurer shall
189 underwrite, tier, or rate the individual risk in one of the following ways: (i) as if the risk received a
190 neutral or average insurance credit score, as defined by the insurer, (ii) by excluding the use of credit
191 information as a factor and using only other underwriting, tiering, or rating criteria, or (iii) in
192 accordance with established underwriting guidelines or filed tiering or rating rules. Any such
193 established underwriting guidelines or filed tiering or rating rules shall consider other actuarially
194 justified factors associated with the risk in addition to the inability to obtain credit information or the
195 insufficiency of the credit information.

196 D. The following factors shall not be used as credit criteria or to determine an insurance credit
197 score for underwriting, tier placement, or rating purposes for a policy insuring an owner-occupied
198 dwelling or the personal property of a tenant's residential property risk:

199 1. Information that has been identified by the consumer reporting agency as disputed by the
200 consumer and coded as such, if the use of such disputed information would result in an adverse action;

201 2. Information that has been identified by the consumer reporting agency as related to insurance
202 inquiries or nonconsumer-initiated inquiries and coded as such;

203 3. Information that has been identified by the consumer reporting agency as related to collection
204 accounts with a medical industry code;

205 4. Information that includes multiple lender inquiries, if coded by the consumer reporting agency as
206 being from the home mortgage industry and made within 30 days of one another, unless only one
207 inquiry is considered;

208 5. Information that includes multiple lender inquiries, if coded by the consumer reporting agency as
209 being from the automobile lending industry and made within 30 days of one another, unless only one
210 inquiry is considered;

211 6. Income, gender, address, zip code, ethnic group, race, color, religion, marital status, or
212 nationality of the consumer; or

213 7. The total available line of credit; however, an insurer may consider the total amount of
214 outstanding debt in relation to the total available line of credit.

215 E. No insurer shall take an adverse action against an applicant for a policy insuring an
216 owner-occupied dwelling or the personal property of a tenant's residential property risk based on credit
217 information, unless an insurer obtains and uses a consumer report procured within 90 days from the
218 date the policy is first written.

219 F. Notwithstanding anything to the contrary, for a policy insuring an owner-occupied dwelling or the
220 personal property of a tenant's residential property risk, an insurer may, upon request, provide
221 reasonable exceptions for an individual whose credit information is directly and adversely impacted by a
222 catastrophic event, as determined by the insurer, including, but not limited to, catastrophic illness or
223 injury or the death of a spouse or member of the same household. The insurer may require reasonable
224 documentation of the event prior to granting an exception. No insurer shall be deemed out of
225 compliance with its filed rules and rates as a result of granting an exception pursuant to this subsection.

226 G. Upon the request of an insured or applicant with a policy insuring an owner-occupied dwelling
227 or the personal property of a tenant's residential property risk for a reevaluation as set forth in this
228 section, the insurer shall reevaluate the individual based on corrected credit information from a
229 consumer reporting agency. If the reevaluation results in a lower premium, the lower premium shall be
230 applied retroactively to the effective date of the current policy term, and the insurer shall either refund
231 or credit the amount to the insured. The insurer may require reasonable documentation of the corrected
232 information from the consumer reporting agency prior to the reevaluation.

233 H. An insurer shall indemnify, defend, and hold agents harmless from and against all liability, fees,
234 and costs arising out of or relating to the actions, errors, or omissions of an agent who obtains or uses
235 credit information or insurance credit scores for an insurer, provided the agent follows the instructions
236 or procedures established by the insurer and complies with any applicable law. Nothing in this
237 subsection shall be construed to provide an applicant or insured with a cause of action that does not
238 exist in the absence of this subsection.

239 I. No consumer reporting agency shall provide or sell data or lists that include any information that
240 in whole or in part was submitted in conjunction with an insurance inquiry about an individual's credit
241 information or a request for a consumer report or an insurance credit score. Such information includes,
242 but is not limited to, the expiration dates of an insurance policy or any other information that may
243 identify time periods during which an individual's insurance may expire and the terms and conditions of
244 the individual's insurance coverage. The restrictions provided in this subsection do not apply to data or

lists the consumer reporting agency supplies to the insurance agent from whom information was received or the insurer on whose behalf such agent acted. Nothing in this subsection shall be construed to restrict any insurer from being able to obtain a claims history report or a motor vehicle report.

J. For the purposes of this section, "insurance credit score" means a number or rating that is derived from an algorithm, computer application, model, or other process that is based in whole or in part on credit information for the purposes of predicting the future insurance loss exposure of an individual applicant or insured for a policy insuring an owner-occupied dwelling or the personal property of a tenant's residential property risk.

K. The provisions set forth in this section shall apply to new policies insuring an owner-occupied dwelling or the personal property of a tenant's residential property risk not later than January 1, 2004, and to renewal policies insuring an owner-occupied dwelling or the personal property of a tenant's residential property risk not later than April 1, 2004.

§ 38.2-2212. Grounds and procedure for cancellation of or refusal to renew motor vehicle insurance policies; review by Commissioner.

A. The following definitions shall apply to this section:

"Cancellation" or "to cancel" means a termination of a policy during the policy period.

"Insurer" means any insurance company, association, or exchange licensed to transact motor vehicle insurance in this Commonwealth.

"Policy of motor vehicle insurance" or "policy" means a policy or contract for bodily injury or property damage liability insurance issued or delivered in this Commonwealth covering liability arising from the ownership, maintenance, or use of any motor vehicle, insuring as the named insured one individual or husband and wife who are residents of the same household, and under which the insured vehicle designated in the policy is either:

a. A motor vehicle of a private passenger, station wagon, or motorcycle type that is not used commercially, rented to others, or used as a public or livery conveyance where the term "public or livery conveyance" does not include car pools, or

b. Any other four-wheel motor vehicle which is not used in the occupation, profession, or business, other than farming, of the insured, or as a public or livery conveyance, or rented to others. The term "policy of motor vehicle insurance" or "policy" does not include (i) any policy issued through the Virginia Automobile Insurance Plan, (ii) any policy covering the operation of a garage, sales agency, repair shop, service station, or public parking place, (iii) any policy providing insurance only on an excess basis, or (iv) any other contract providing insurance to the named insured even though the contract may incidentally provide insurance on motor vehicles.

"Renewal" or "to renew" means (i) the issuance and delivery by an insurer of a policy superseding at the end of the policy period a policy previously issued and delivered by the same insurer, providing types and limits of coverage at least equal to those contained in the policy being superseded, or (ii) the issuance and delivery of a certificate or notice extending the term of a policy beyond its policy period or term with types and limits of coverage at least equal to those contained in the policy. Each renewal shall conform with the requirements of the manual rules and rating program currently filed by the insurer with the Commission. Except as provided in subsection K of this section, any policy with a policy period or term of less than twelve months or any policy with no fixed expiration date shall for the purpose of this section be considered as if written for successive policy periods or terms of six months from the original effective date.

B. This section shall apply only to that portion of a policy of motor vehicle insurance providing the coverage required by §§ 38.2-2204, 38.2-2205 and 38.2-2206.

C. 1. No insurer shall refuse to renew a motor vehicle insurance policy solely because of any one or more of the following factors:

- a. Age;
- b. Sex;
- c. Residence;
- d. Race;
- e. Color;
- f. Creed;
- g. National origin;
- h. Ancestry;
- i. Marital status;
- j. Lawful occupation, including the military service;
- k. Lack of driving experience, or number of years driving experience;
- l. Lack of supporting business or lack of the potential for acquiring such business;
- m. One or more accidents or violations that occurred more than forty-eight months immediately preceding the upcoming anniversary date;

n. One or more claims submitted under the uninsured motorists coverage of the policy where the uninsured motorist is known or there is physical evidence of contact;

o. A single claim by a single insured submitted under the medical expense coverage due to an accident for which the insured was neither wholly nor partially at fault;

p. One or more claims submitted under the comprehensive or towing coverages. However, nothing in this section shall prohibit an insurer from modifying or refusing to renew the comprehensive or towing coverages at the time of renewal of the policy on the basis of one or more claims submitted by an insured under those coverages, provided that the insurer shall mail or deliver to the insured at the address shown in the policy written notice of any such change in coverage at least forty-five days prior to the renewal;

q. Two or fewer motor vehicle accidents within a three-year period unless the accident was caused either wholly or partially by the named insured, a resident of the same household, or other customary operator; or

r. Credit information contained in a "consumer report," as defined in the federal Fair Credit Reporting Act, 15 U.S.C. § 1681 et seq., bearing on a natural person's creditworthiness, credit standing or credit capacity; unless, in addition to any other requirements that may apply, the insurer includes in the notice required by this section the following statement or a statement substantially similar to it: "This nonrenewal is based on information contained in a consumer report relating to you and/or someone else who resides in your household." The notice shall also contain: (i) the name and address of an institutional source from whom the insurer obtained the credit information and (ii) a statement advising the insured that, if the insured wishes to inquire further about the credit information on which the nonrenewal is based and obtain a free copy of the "consumer report," the insured may do so by mailing a written request to the insurer, or such other party as the insurer shall identify in the notice, no more than ten days after the date on which the notice of nonrenewal was mailed to the insured. If the insured submits such written notification, the nonrenewal shall not become effective until forty-five days after the accuracy of the credit information, which the insured has questioned and on which the nonrenewal was based, has been verified and communicated to the insured. Such verification shall be deemed to have been made upon completion of the investigation of the credit information which the insured has questioned and on which the nonrenewal was based. The insured must cooperate in the investigation of the credit information, including responding to any communication submitted by, or on behalf of, the insurer no more than ten days after the date on which such communication was mailed to the insured. If the insured fails to cooperate in the investigation of the credit information, the insurer may, after providing fifteen days' written notice to the insured, terminate such investigation and nonrenew the policy. An insurer may require that an insured submit written documentation authorizing the insurer, or such other party as the insurer shall identify, to perform the investigation of the credit information. The insured shall be obligated to pay any pro rata premium due for insurance provided during the period in which the investigation of the credit information is pending up to the date on which the policy nonrenewal becomes effective. Although the obligations imposed upon an insurer by this subdivision may be satisfied by a third party who agrees, and is authorized, to act on behalf of the insurer, the insurer shall remain responsible for compliance with the obligations imposed by this subdivision. *If credit information is used, in part, as the basis for the nonrenewal, such credit information shall be based on a consumer report procured within 120 days from the effective date of the nonrenewal. The provisions of this subdivision shall apply only to insurance purchased primarily for personal, family, or household purposes.*

2. Nothing in this section shall require any insurer to renew a policy for an insured where the insured's occupation has changed so as to materially increase the risk. Nothing contained in subdivisions C 1 n, 1 o and 1 p of this subsection shall prohibit an insurer from refusing to renew a policy where a claim is false or fraudulent. Nothing in this section prohibits any insurer from setting rates in accordance with relevant actuarial data.

D. No insurer shall cancel a policy except for one or more of the following reasons:

1. The named insured or any other operator who either resides in the same household or customarily operates a motor vehicle insured under the policy has had his driver's license suspended or revoked during the policy period or, if the policy is a renewal, during its policy period or the ninety days immediately preceding the last effective date.

2. The named insured fails to pay the premium for the policy or any installment of the premium, whether payable to the insurer or its agent either directly or indirectly under any premium finance plan or extension of credit.

3. The named insured or his duly constituted attorney-in-fact has notified the insurer of a change in the insured's legal residence to a state other than Virginia and the insured vehicle will be principally garaged in the new state of legal residence.

E. No cancellation or refusal to renew by an insurer of a policy of motor vehicle insurance shall be effective unless the insurer delivers or mails to the named insured at the address shown in the policy a

written notice of the cancellation or refusal to renew. The notice shall:

1. Be in a type size authorized under § 38.2-311.

2. State the effective date of the cancellation or refusal to renew. The effective date of cancellation or refusal to renew shall be at least forty-five days after mailing or delivering to the insured the notice of cancellation or notice of refusal to renew. However, when the policy is being canceled or not renewed for the reason set forth in subdivision 2 of subsection D of this section the effective date may be less than forty-five days but at least fifteen days from the date of mailing or delivery.

3. State the specific reason of the insurer for cancellation or refusal to renew and provide for the notification required by §§ 38.2-608, 38.2-609, and subsection B of § 38.2-610. However, those notification requirements shall not apply when the policy is being canceled or not renewed for the reason set forth in subdivision 2 of subsection D of this section.

4. Inform the insured of his right to request in writing within fifteen days of the receipt of the notice that the Commissioner review the action of the insurer.

The notice of cancellation or refusal to renew shall contain the following statement to inform the insured of such right:

IMPORTANT NOTICE

Within fifteen days of receiving this notice, you or your attorney may request in writing that the Commissioner of Insurance review this action to determine whether the insurer has complied with Virginia laws in canceling or nonrenewing your policy. If this insurer has failed to comply with the cancellation or nonrenewal laws, the Commissioner may require that your policy be reinstated. However, the Commissioner is prohibited from making underwriting judgments. If this insurer has complied with the cancellation or nonrenewal laws, the Commissioner does not have the authority to overturn this action.

5. Inform the insured of the possible availability of other insurance which may be obtained through his agent, through another insurer, or through the Virginia Automobile Insurance Plan.

6. If sent by mail, comply with the provisions of § 38.2-2208.

Nothing in this subsection prohibits any insurer or agent from including in the notice of cancellation or refusal to renew, any additional disclosure statements required by state or federal laws, or any additional information relating to the availability of other insurance.

F. Nothing in this section shall apply:

1. If the insurer or its agent acting on behalf of the insurer has manifested its willingness to renew by issuing or offering to issue a renewal policy, certificate, or other evidence of renewal, or has manifested its willingness to renew in writing to the insured. The written manifestation shall include the name of a proposed insurer, the expiration date of the policy, the type of insurance coverage, and information regarding the estimated renewal premium. The insurer shall retain a copy of each written manifestation for a period of at least one year from the expiration date of any policy that is not renewed;

2. If the named insured, or his duly constituted attorney-in-fact, has notified the insurer or its agent orally, or in writing, if the insurer requires such notification to be in writing, that he wishes the policy to be canceled or that he does not wish the policy to be renewed, or if prior to the date of expiration he fails to accept the offer of the insurer to renew the policy; or

3. To any motor vehicle insurance policy which has been in effect less than sixty days when the termination notice is mailed or delivered to the insured, unless it is a renewal policy.

G. There shall be no liability on the part of and no cause of action of any nature shall arise against the Commissioner or his subordinates; any insurer, its authorized representatives, its agents, or its employees; or any person furnishing to the insurer information as to reasons for cancellation or refusal to renew, for any statement made by any of them in complying with this section or for providing information pertaining to the cancellation or refusal to renew. For the purposes of this section, no insurer shall be required to furnish a notice of cancellation or refusal to renew to anyone other than the named insured, any person designated by the named insured, or any other person to whom such notice is required to be given by the terms of the policy and the Commissioner.

H. Within fifteen days of receipt of the notice of cancellation or refusal to renew, any insured or his attorney shall be entitled to request in writing to the Commissioner that he review the action of the insurer in canceling or refusing to renew the policy of the insured. Upon receipt of the request, the Commissioner shall promptly begin a review to determine whether the insurer's cancellation or refusal to renew complies with the requirements of this section and of § 38.2-2208 if the notice was sent by mail. The policy shall remain in full force and effect during the pendency of the review by the Commissioner except where the cancellation or refusal to renew is for the reason set forth in subdivision 2 of subsection D of this section, in which case the policy shall terminate as of the effective date stated in the notice. Where the Commissioner finds from the review that the cancellation or refusal to renew has not complied with the requirements of this section or of § 38.2-2208, he shall immediately notify the

insurer, the insured and any other person to whom such notice was required to be given by the terms of the policy that the cancellation or refusal to renew is not effective. Nothing in this section authorizes the Commissioner to substitute his judgment as to underwriting for that of the insurer. Where the Commissioner finds in favor of the insured, the Commission in its discretion may award the insured reasonable attorneys' fees.

I. Each insurer shall maintain for at least one year, records of cancellation and refusal to renew and copies of every notice or statement referred to in subsection E of this section that it sends to any of its insureds.

J. The provisions of this section shall not apply to any insurer that limits the issuance of policies of motor vehicle liability insurance to one class or group of persons engaged in any one particular profession, trade, occupation, or business. Nothing in this section requires an insurer to renew a policy of motor vehicle insurance if the insured does not conform to the occupational or membership requirements of an insurer who limits its writings to an occupation or membership of an organization. No insurer is required to renew a policy if the insured becomes a nonresident of Virginia.

K. Notwithstanding any other provision of this section, a motor vehicle insurance policy with a policy period or term of five months or less may expire at its expiration date when the insurer has manifested in writing its willingness to renew the policy for at least thirty days and has mailed the written manifestation to the insured at least fifteen days before the expiration date of the policy. The written manifestation shall include the name of the proposed insurer, the expiration date of the policy, the type of insurance coverage, and the estimated renewal premium. The insurer shall retain a copy of the written manifestation for at least one year from the expiration date of any policy that is not renewed.

§ 38.2-2234. *Insurance credit score disclosure; use of credit information.*

A. Any insurer issuing or delivering a policy of motor vehicle insurance in this Commonwealth, as defined in § 38.2-2212, that uses credit information contained in a consumer report for underwriting, tier placement or rating an applicant or insured shall meet the following requirements:

1. Disclose, either on the insurance application or at the time the insurance application is taken (i) that it shall obtain credit information in connection with such application, (ii) that the insured may request that his credit information be updated; and (iii) that, if the insured questions the accuracy of the credit information, the insurer will, upon request of the insured, reevaluate the insured based on corrected credit information from a consumer reporting agency. The disclosure may be made by the insurer or its agent. Such disclosure shall be either written or provided to an applicant in the same medium as the application for insurance. The insurer need not provide the disclosure required under this subsection to any insured on a renewal policy, if such insured has previously been provided a disclosure. Use of the following example disclosure constitutes compliance with this subsection: "In connection with this application for insurance, we shall review your credit report or obtain or use an insurance credit score based on the information contained in that credit report. We may use a third party in connection with the development of your insurance credit score. You may request that your credit information be updated and if you question the accuracy of the credit information, we will, upon your request, reevaluate you based on corrected credit information from a consumer reporting agency."

2. If an insurer takes an adverse action, based in whole or in part, upon credit information, the insurer must provide notification to the applicant or insured that the adverse action was based, in whole or in part, on credit information. Such notification shall also either include a statement advising the applicant or insured of the primary factors or characteristics that were used as the basis for the adverse action, or notify the applicant or insured that he may request such information. For the purposes of this section, adverse action means a denial, nonrenewal or cancellation of, an increase in any charge for or refusal to apply a discount, or placement in a less favorable tier, or a reduction or other adverse or unfavorable change in the terms of coverage or amount of, any insurance, existing or applied for, in connection with underwriting, tier placement or rating. Adverse action includes, but is not limited to, circumstances where the applicant or insured (i) did not receive the company's most favorable rate, (ii) was not placed in the company's best tier, and (iii) when there are multiple companies available within a group of insurers, the applicant or insured did not receive coverage in the group's most favorably priced company. In the case of renewals, the circumstances listed in clauses (i), (ii), and (iii) shall not be deemed adverse actions if, due to the insured's credit information, the insured is not receiving a less favorable rate or placed in a less favorable tier or company than during the policy period immediately preceding renewal.

B. If an insurer uses credit information from a consumer report for tier placement or rating of its renewal business for a policy of motor vehicle insurance, as defined in § 38.2-2212, issued or delivered in this Commonwealth the insurer shall be required to update the credit information at least once every three years, provided, however, that the insurer shall be required to update an insured's credit information within the three-year period if requested by the insured. If an update request is made by the insured at least 45 days prior to the end of the policy term, any adjustment to the premium required by the update of the insured's credit information shall take effect at the first renewal following the request

for update of the insured's credit information. If an update request is made by the insured within 45 days of the end of the policy term, the insurer shall have the option of applying any adjustment to the premium required by the update of the insured's credit information to the first renewal or the second renewal following the request for update of the insured's credit information. An insurer need not update the credit information more frequently than once every policy term. Notwithstanding the requirements of this subsection, no insurer need obtain updated credit information if the insured has the most favorably priced tier or rate based on his credit information.

C. Notwithstanding the provisions of subdivision A 3 of § 38.2-1904, if an insurer issuing or delivering a policy of motor vehicle insurance, as defined in § 38.2-2212, in this Commonwealth is unable to obtain credit information from a consumer report or when an insured or applicant has insufficient credit to produce an insurance credit score, the insurer shall underwrite, tier, or rate the individual risk in one of the following ways: (i) as if the risk received a neutral or average insurance credit score, as defined by the insurer, (ii) by excluding the use of credit information as a factor and using only other underwriting, tiering, or rating criteria, or (iii) in accordance with established underwriting guidelines or filed tiering or rating rules. Any such established underwriting guidelines or filed tiering or rating rules shall consider other actuarially justified factors associated with the risk in addition to the inability to obtain credit information or the insufficiency of the credit information.

D. The following factors shall not be used as credit criteria or to determine an insurance credit score for underwriting, tier placement, or rating purposes for a policy of motor vehicle insurance, as defined in § 38.2-2212, issued or delivered in this Commonwealth:

1. Information that has been identified by the consumer reporting agency as disputed by the consumer and coded as such, if the use of such disputed information would result in an adverse action;

2. Information that has been identified by the consumer reporting agency as related to insurance inquiries or nonconsumer-initiated inquiries and coded as such;

3. Information that has been identified by the consumer reporting agency as related to collection accounts with a medical industry code;

4. Information that includes multiple lender inquiries, if coded by the consumer reporting agency as being from the home mortgage industry and made within 30 days of one another, unless only one inquiry is considered;

5. Information that includes multiple lender inquiries, if coded by the consumer reporting agency as being from the automobile lending industry and made within 30 days of one another, unless only one inquiry is considered;

6. Income, gender, address, zip code, ethnic group, race, color, religion, marital status, or nationality of the consumer; or

7. The total available line of credit; however, an insurer may consider the total amount of outstanding debt in relation to the total available line of credit.

E. No insurer shall take an adverse action against an applicant for a policy of motor vehicle insurance, as defined in § 38.2-2212, issued or delivered in this Commonwealth, based on credit information, unless an insurer obtains and uses a consumer report procured within 90 days from the date the policy is first written.

F. Notwithstanding anything to the contrary, for a policy of motor vehicle insurance, as defined in § 38.2-2212, issued or delivered in this Commonwealth, an insurer may, upon request, provide reasonable exceptions for an individual whose credit information is directly and adversely impacted by a catastrophic event, as determined by the insurer, including, but not limited to, catastrophic illness or injury or the death of a spouse or member of the same household. The insurer may require reasonable documentation of the event prior to granting an exception. No insurer shall be deemed out of compliance with its filed rules and rates as a result of granting an exception pursuant to this subsection.

G. Upon the request of an insured or applicant with respect to a policy of motor vehicle insurance, as defined in § 38.2-2212, issued or delivered in this Commonwealth, for a reevaluation as set forth in this section, the insurer shall reevaluate the individual based on corrected credit information from a consumer reporting agency. If the reevaluation results in a lower premium, the lower premium shall be applied retroactively to the effective date of the current policy term, and the insurer shall either refund or credit the amount to the insured. The insurer may require reasonable documentation of the corrected information from the consumer reporting agency prior to the reevaluation.

H. An insurer shall indemnify, defend, and hold agents harmless from and against all liability, fees, and costs arising out of or relating to the actions, errors, or omissions of an agent who obtains or uses credit information or insurance credit scores for an insurer, provided the agent follows the instructions or procedures established by the insurer and complies with any applicable law. Nothing in this subsection shall be construed to provide an applicant or insured with a cause of action that does not exist in the absence of this subsection.

I. No consumer reporting agency shall provide or sell data or lists that include any information that

552 in whole or in part was submitted in conjunction with an insurance inquiry about an individual's credit
553 information or a request for a consumer report or an insurance credit score. Such information includes,
554 but is not limited to, the expiration dates of an insurance policy or any other information that may
555 identify time periods during which an individual's insurance may expire and the terms and conditions of
556 the individual's insurance coverage. The restrictions provided in this subsection do not apply to data or
557 lists the consumer reporting agency supplies to the insurance agent from whom information was
558 received or the insurer on whose behalf such agent acted. Nothing in this subsection shall be construed
559 to restrict any insurer from being able to obtain a claims history report or a motor vehicle report.

560 J. For the purposes of this section, "insurance credit score" means a number or rating that is
561 derived from an algorithm, computer application, model, or other process that is based in whole or in
562 part on credit information for the purposes of predicting the future insurance loss exposure of an
563 individual applicant or insured for or under a policy of motor vehicle insurance, as defined in
564 § 38.2-2212, issued or delivered in this Commonwealth.

565 K. The provisions set forth in this section shall apply to new policies of motor vehicle insurance, as
566 defined in § 38.2-2212, issued or delivered in this Commonwealth, not later than January 1, 2004, and
567 to renewal policies of motor vehicle insurance, as defined in § 38.2-2212, issued or delivered in this
568 Commonwealth, not later than April 1, 2004.

569 L. The provisions of this section shall apply only to insurance purchased primarily for personal,
570 family, or household purposes.