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HOUSE BILL NO. 1882

Offered January 12, 2005

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A *BILL to amend and reenact §§ 38.2-231 and 38.2-2200 of the Code of Virginia, relating to miscellaneous casualty insurance; notices and policy provisions.*

Patron—Hargrove

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 38.2-231 and 38.2-2200 of the Code of Virginia are amended and reenacted as follows:

§ 38.2-231. Notice of cancellation, refusal to renew, reduction in coverage or increase in rate of certain liability insurance policies.

A. 1. No cancellation or refusal to renew by an insurer of (i) a policy of insurance as defined in § 38.2-117 or § 38.2-118 insuring a business entity; ~~or~~; (ii) a policy of insurance that includes as a part thereof insurance as defined in § 38.2-117 or § 38.2-118 insuring a business entity; ~~or~~; (iii) a policy of motor vehicle insurance against legal liability of the insured as defined in § 38.2-124 insuring a business entity; or (iv) a policy of miscellaneous casualty insurance as defined in subsection B of § 38.2-111 insuring a business entity, shall be effective unless the insurer delivers or mails to the named insured at the address shown on the policy a written notice of cancellation or refusal to renew. Such notice shall:

- a. Be in a type size authorized under § 38.2-311;
- b. State the date, which shall not be less than 45 days after the delivery or mailing of the notice of cancellation or refusal to renew, on which such cancellation or refusal to renew shall become effective, except that such effective date may not be less than 15 days from the date of mailing or delivery when the policy is being cancelled or not renewed for failure of the insured to discharge when due any of its obligations in connection with the payment of premium for the policy;
- c. State the specific reason or reasons of the insurer for cancellation or refusal to renew;
- d. Advise the insured of its right to request in writing, within 15 days of the receipt of the notice, that the Commissioner of Insurance review the action of the insurer; and
- e. In the case of a policy of motor vehicle insurance, inform the insured of the possible availability of other insurance which may be obtained through its agent, through another insurer, or through the Virginia Automobile Insurance Plan.

2. Nothing in this subsection shall apply to any policy of insurance if the named insured or his duly constituted attorney-in-fact has notified orally, or in writing, if the insurer requires such notification to be in writing, the insurer or its agent 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.

B. No insurer shall cancel or refuse to renew a policy of motor vehicle insurance against legal liability of the insured as defined in § 38.2-124 insuring a business entity solely because of lack of supporting business or lack of the potential for acquiring such business.

C. No reduction in coverage for personal injury or property damage liability initiated by an insurer and no increase in the filed rate for such coverage greater than 25 percent initiated by an insurer of (i) a policy of insurance defined in § 38.2-117 or § 38.2-118 insuring a business entity; ~~or~~ ~~or~~; (ii) a policy of insurance that includes as a part thereof insurance defined in § 38.2-117 or § 38.2-118 insuring a business entity; ~~or~~; (iii) a policy of motor vehicle insurance against legal liability of the insured as defined in § 38.2-124 insuring a business entity; or (iv) a policy of miscellaneous casualty insurance as defined in subsection B of § 38.2-111 insuring a business entity, and which in the case of a reduction in coverage is subject to § 38.2-1912, shall be effective unless the insurer delivers or mails to the named insured at the address shown on the policy a written notice of such reduction in coverage or rate increase not later than 45 days prior to the effective date of same. Such notice shall:

1. Be in a type size authorized under § 38.2-311;
2. State the date, which shall not be less than 45 days after the delivery or mailing of the notice of reduction in coverage or increase in rate, on which such reduction in coverage or increase in rate shall become effective;
3. State the manner in which coverage under an existing policy will be reduced or the amount of such rate increase;
4. State the specific reason or reasons for the reduction in coverage or increase in rate;
5. Advise the insured of its right to request in writing, within 15 days of receipt of the notice, that

INTRODUCED

HB1882

59 the Commissioner of Insurance review the action of the insurer.

60 D. If an insurer does not provide notice in the manner required in subsection C, coverage shall
61 remain in effect until 45 days after written notice of reduction in coverage or increase in rate is mailed
62 or delivered to the insured at the address shown on the policy, unless the insured obtains replacement
63 coverage or elects to cancel sooner in either of which cases coverage under the prior policy shall cease
64 on the effective date of the replacement coverage or the elected date of cancellation as the case may be.
65 If the insured fails to accept or rejects the changed policy, coverage for any period that extends beyond
66 the expiration date will be under the prior policy's terms and conditions. If the insured accepts the
67 changed policy, the reduction in coverage or increase in rate shall take effect upon the expiration of the
68 prior policy.

69 E. Notice of reduction in coverage or increase in rate shall not be required if the insurer, after
70 written demand, has not received, within 45 days after such demand has been mailed or delivered to the
71 insured at the address shown on the policy, sufficient information from the insured to provide the
72 required notice, or if such notice is waived in writing by the insured.

73 F. No written notice of cancellation, refusal to renew, reduction in coverage or increase in rate that is
74 mailed by an insurer to an insured in accordance with this section shall be effective unless:

75 1. a. It is sent by registered or certified mail,

76 b. At the time of mailing the insurer obtains a written receipt from the United States Postal Service
77 showing the name and address of the insured stated in the policy, or

78 c. At the time of mailing the insurer (i) obtains a written receipt from the United States Postal
79 Service showing the date of mailing and the number of items mailed and (ii) retains a mailing list
80 showing the name and address of the insured stated in the policy, or the last known address, to whom
81 the notices were mailed, together with a signed statement by the insurer that the written receipt from the
82 United States Postal Service corresponds to the mailing list retained by the insurer; and

83 2. The insurer retains a copy of the notice of cancellation, refusal to renew, reduction in coverage or
84 increase in rate.

85 3. a. If the terms of a policy of motor vehicle insurance insuring a business entity require the notice
86 of cancellation, refusal to renew, reduction in coverage or increase in rate to be given to any lienholder,
87 then the insurer shall mail such notice and retain a copy of the notice in the manner required by this
88 subsection. If the notices sent to the insured and the lienholder are part of the same form, the insurer
89 may retain a single copy of the notice. The registered, certified or regular mail postal receipt and the
90 copy of the notices required by this subsection shall be retained by the insurer for at least one year from
91 the date of termination.

92 b. Notwithstanding the provisions of subdivision 3 a, if the terms of the policy require the notice of
93 cancellation, refusal to renew, reduction in coverage or increase in rate to be given to any lienholder, the
94 insurer and lienholder may agree by separate agreement that such notices may be transmitted
95 electronically provided that the insurer and lienholder agree upon the specifics for transmittal and
96 acknowledgement of notification. Evidence of transmittal or receipt of the notification required by this
97 subsection shall be retained by the insurer for at least one year from the date of termination.

98 4. Copy, as used in this subsection, shall include photographs, microphotographs, photostats,
99 microfilm, microcard, printouts or other reproductions of electronically stored data, or copies from
100 optical disks, electronically transmitted facsimiles, or any other reproduction of an original from a
101 process which forms a durable medium for its recording, storing, and reproducing.

102 G. Nothing in this section shall prohibit any insurer or agent from including in a notice of
103 cancellation, refusal to renew, reduction in coverage or rate increase any additional disclosure statements
104 required by state or federal laws.

105 H. For the purpose of this section the terms (i) "business entity" shall mean an entity as defined by
106 subsection A of §§ 13.1-543, 13.1-603 or § 13.1-803 and shall include an individual, a partnership, an
107 unincorporated association, the Commonwealth, a county, city, town, or an authority, board, commission,
108 sanitation, soil and water, planning or other district, public service corporation owned, operated or
109 controlled by the Commonwealth, a locality or other local governmental authority, (ii) "policy of motor
110 vehicle insurance" shall mean a policy or contract for bodily injury or property damage liability insuring
111 a business entity issued or delivered in this Commonwealth covering liability arising from the
112 ownership, maintenance, or use of any motor vehicle, but does not include (a) any policy issued through
113 the Virginia Automobile Insurance Plan, (b) any policy providing insurance only on an excess basis, or
114 (c) any other contract providing insurance to the named insured even though the contract may
115 incidentally provide insurance on motor vehicles, and (iii) "reduction in coverage" shall mean, but not be
116 limited to, any diminution in scope of coverage, decrease in limits of liability, addition of exclusions,
117 increase in deductibles, or reduction in the policy term or duration except a reduction in coverage filed
118 with and approved by the Commission and applicable to an entire line, classification or subclassification
119 of insurance.

120 I. Within 15 days of receipt of the notice of cancellation, refusal to renew, reduction in coverage or

121 increase in rate, the insured shall be entitled to request in writing to the Commissioner that he review
122 the action of the insurer. Upon receipt of the request, the Commissioner shall promptly begin a review
123 to determine whether the insurer's notice of cancellation, refusal to renew, reduction in coverage or rate
124 increase complies with the requirements of this section. Where the Commissioner finds from the review
125 that the notice of cancellation, refusal to renew, reduction in coverage or rate increase does not comply
126 with the requirements of this section, he shall immediately notify the insurer, the insured and any other
127 person to whom such notice was required to be given by the terms of the policy that such notice is not
128 effective. Nothing in this section authorizes the Commissioner to substitute his judgment as to
129 underwriting for that of the insurer. Pending review by the Commission, this section shall not operate to
130 relieve an insured from the obligation to pay any premium when due; however, if the Commission finds
131 that the notice required by this section was not proper, the Commission may order the insurer to pay to
132 the insured any overpayment of premium made by the insured.

133 J. Every insurer shall maintain for at least one year records of cancellation, refusals to renew,
134 reductions in coverage and rate increases to which this section applies and copies of every notice or
135 statement required by subsections A, C and F of this section that it sends to any of its insureds.

136 K. There shall be no liability on the part of and no cause of action of any nature shall arise against
137 (i) the Commissioner of Insurance or his subordinates, (ii) any insurer, its authorized representative, its
138 agents, or its employees, or (iii) any firm, person or corporation furnishing to the insurer information as
139 to reasons for cancellation, refusal to renew, reduction in coverage or rate increase, for any statement
140 made by any of them in complying with this section or for providing information pertaining thereto.

141 § 38.2-2200. Required provisions as to insolvency or bankruptcy, and as to when action maintained
142 against insurer.

143 No policy or contract insuring or indemnifying against liability for injury to or the death of any
144 person, ~~or liability for injury to or destruction of property, or liability for injury to the economic~~
145 ~~interests of any person~~, shall be issued or delivered in ~~this the~~ Commonwealth unless it contains in
146 substance the following provisions or other provisions that are at least equally favorable to the insured
147 and to judgment creditors:

148 1. That the insolvency or bankruptcy of the insured, or the insolvency of the insured's estate, shall
149 not relieve the insurer of any of its obligations under the policy or contract.

150 2. That if execution on a judgment against the insured or his personal representative is returned
151 unsatisfied in an action brought to recover damages for injury sustained or for loss or damage incurred
152 during the life of the policy or contract, then an action may be maintained against the insurer under the
153 terms of the policy or contract for the amount of the judgment not exceeding the amount of the
154 applicable limit of coverage under the policy or contract.