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HOUSE BILL NO. 2410

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the House Committee on Commerce and Labor
on January 25, 2005)

(Patron Prior to Substitute—Delegate Rust)

A BILL to amend and reenact § 38.2-231 of the Code of Virginia, relating to medical malpractice insurance policies; notices.

Be it enacted by the General Assembly of Virginia:

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

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

A. 1. No cancellation or refusal to renew by an insurer of a policy of insurance as defined in § 38.2-117 or § 38.2-118 insuring a business entity, or 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 a policy of motor vehicle insurance against legal liability of the insured as defined in § 38.2-124 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~~ *premium* greater than 25 percent ~~initiated by an insurer~~ of a policy of insurance defined in § 38.2-117 or § 38.2-118 insuring a business entity, or of 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 a policy of motor vehicle insurance against legal liability of the insured as defined in § 38.2-124 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 premium~~ *increase* not later than 45 days prior to the effective date of same. ~~The increase in premium shall be the difference between the renewal premium and the premium charged by the insurer at the effective date of the expiring policy.~~ 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 premium~~, on which such reduction in coverage or increase in ~~rate premium~~ shall become effective;

3. ~~State the manner in which coverage under an existing policy will be reduced or the amount of such rate increase.~~ Advise the named insured that the specific reason for the increase and the amount of the increase, or, if in the case of a reduction in coverage, the specific reason for the reduction and the manner in which coverage will be reduced, may be obtained from the agent or the insurer;

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 the Commissioner of Insurance review the action of the insurer.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

144 L. Notwithstanding anything in this section to the contrary, if an insurer cancels or refuses to renew
145 a policy of medical malpractice insurance as defined in § 38.2-2800, or if the premium increases for a
146 medical malpractice insurance policy by more than 25 percent of the previous policy's premium, the
147 insurer shall provide no fewer than 90 days notice prior to the renewal effective date, or, if such policy
148 is being cancelled or non-renewed for failure of the insured to discharge when due any of its
149 obligations in connection with the payment of premium for the policy, the effective date of cancellation
150 or refusal to renew shall not be less than 15 days from the date of mailing or delivery of the notice.
151 The increase in the premium shall be the difference between the renewal premium and the premium
152 charged by the insurer at the effective date of the expiring policy.