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SENATE BILL NO. 90**AMENDMENT IN THE NATURE OF A SUBSTITUTE**(Proposed by the Joint Conference Committee
on March 11, 2006)

(Patron Prior to Substitute—Senator Watkins)

A BILL to amend and reenact § 38.2-2212 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 38.2-2213.1, by adding in Article 10 of Chapter 10 of Title 46.2 a section numbered 46.2-1088.6, and by adding a section numbered 46.2-1532.2, relating to motor vehicle recording devices; insurance; disclosure.

Be it enacted by the General Assembly of Virginia:

1. That § 38.2-2212 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 38.2-2213.1, by adding in Article 10 of Chapter 10 of Title 46.2 a section numbered 46.2-1088.6, and by adding a section numbered 46.2-1532.2 as follows:

§ 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 12 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;

60 k. Lack of driving experience, or number of years driving experience;
61 l. Lack of supporting business or lack of the potential for acquiring such business;
62 m. One or more accidents or violations that occurred more than 48 months immediately preceding
63 the upcoming anniversary date;
64 n. One or more claims submitted under the uninsured motorists coverage of the policy where the
65 uninsured motorist is known or there is physical evidence of contact;
66 o. A single claim by a single insured submitted under the medical expense coverage due to an
67 accident for which the insured was neither wholly nor partially at fault;
68 p. One or more claims submitted under the comprehensive or towing coverages. However, nothing in
69 this section shall prohibit an insurer from modifying or refusing to renew the comprehensive or towing
70 coverages at the time of renewal of the policy on the basis of one or more claims submitted by an
71 insured under those coverages, provided that the insurer shall mail or deliver to the insured at the
72 address shown in the policy written notice of any such change in coverage at least 45 days prior to the
73 renewal;
74 q. Two or fewer motor vehicle accidents within a three-year period unless the accident was caused
75 either wholly or partially by the named insured, a resident of the same household, or other customary
76 operator; ~~or~~
77 r. Credit information contained in a "consumer report," as defined in the federal Fair Credit
78 Reporting Act, 15 U.S.C. § 1681 et seq., bearing on a natural person's creditworthiness, credit standing
79 or credit capacity. If credit information is used, in part, as the basis for the nonrenewal, such credit
80 information shall be based on a consumer report procured within 120 days from the effective date of the
81 nonrenewal. The provisions of this subdivision shall apply only to insurance purchased primarily for
82 personal, family, or household purposes; ; *or*
83 *s. The refusal of a motor vehicle owner as defined in § 46.2-1088.6 to provide access to recorded*
84 *data from a recording device as defined in § 46.2-1088.6.*
85 2. Nothing in this section shall require any insurer to renew a policy for an insured where the
86 insured's occupation has changed so as to materially increase the risk. Nothing contained in subdivisions
87 C 1 n, 1 o and 1 p of this subsection shall prohibit an insurer from refusing to renew a policy where a
88 claim is false or fraudulent. Nothing in this section prohibits any insurer from setting rates in accordance
89 with relevant actuarial data.
90 D. No insurer shall cancel a policy except for one or more of the following reasons:
91 1. The named insured or any other operator who either resides in the same household or customarily
92 operates a motor vehicle insured under the policy has had his driver's license suspended or revoked
93 during the policy period or, if the policy is a renewal, during its policy period or the 90 days
94 immediately preceding the last effective date.
95 2. The named insured fails to pay the premium for the policy or any installment of the premium,
96 whether payable to the insurer or its agent either directly or indirectly under any premium finance plan
97 or extension of credit.
98 3. The named insured or his duly constituted attorney-in-fact has notified the insurer of a change in
99 the insured's legal residence to a state other than Virginia and the insured vehicle will be principally
100 garaged in the new state of legal residence.
101 E. No cancellation or refusal to renew by an insurer of a policy of motor vehicle insurance shall be
102 effective unless the insurer delivers or mails to the named insured at the address shown in the policy a
103 written notice of the cancellation or refusal to renew. The notice shall:
104 1. Be in a type size authorized under § 38.2-311.
105 2. State the effective date of the cancellation or refusal to renew. The effective date of cancellation
106 or refusal to renew shall be at least 45 days after mailing or delivering to the insured the notice of
107 cancellation or notice of refusal to renew. However, when the policy is being canceled or not renewed
108 for the reason set forth in subdivision 2 of subsection D of this section the effective date may be less
109 than 45 days but at least 15 days from the date of mailing or delivery.
110 3. State the specific reason of the insurer for cancellation or refusal to renew and provide for the
111 notification required by §§ 38.2-608, 38.2-609, and subsection B of § 38.2-610. However, those
112 notification requirements shall not apply when the policy is being canceled or not renewed for the
113 reason set forth in subdivision 2 of subsection D of this section.
114 4. Inform the insured of his right to request in writing within 15 days of the receipt of the notice that
115 the Commissioner review the action of the insurer.
116 The notice of cancellation or refusal to renew shall contain the following statement to inform the
117 insured of such right:
118 **IMPORTANT NOTICE**
119 Within 15 days of receiving this notice, you or your attorney may request in writing that the
120 Commissioner of Insurance review this action to determine whether the insurer has complied with
121 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 60 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 15 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 30 days and has mailed the written manifestation to the insured at least 15 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

183 of insurance coverage, and the estimated renewal premium. The insurer shall retain a copy of the written
184 manifestation for at least one year from the expiration date of any policy that is not renewed.

185 § 38.2-2213.1. *Certain action prohibited when motor vehicle owner fails to allow access to recorded*
186 *data from recording device.*

187 *No insurer or agent shall reduce coverage, increase the insured's premium, apply a surcharge, refuse*
188 *to apply a discount other than a discount that is based on data recorded by a recording device as*
189 *defined in § 46.2-1088.6, place in a less favorable tier, refuse to place in the company's best tier, or*
190 *when there are multiple companies available within a group of insurers, fail to place in the most*
191 *favorably priced company solely because a motor vehicle owner refuses to allow an insurer access to*
192 *recorded data as defined in § 46.2-1088.6 from a recording device as defined in § 46.2-1088.6.*
193 *However, nothing in this section shall prohibit an insurer from charging an actuarially sound rate in*
194 *accordance with subdivision A 3 of § 38.2-1904.*

195 § 46.2-1088.6. *Motor vehicle recording devices.*

196 A. *As used in this section:*

197 "Accessed" means downloaded, extracted, scanned, read, or otherwise retrieved.

198 "Owner" means a person having all the incidents of ownership, including the legal title of a vehicle
199 whether or not such person lends, rents, or creates a security interest in the vehicle; a person entitled to
200 the possession of a vehicle as the purchaser under a security agreement; or a person entitled to
201 possession of the vehicle as the lessee pursuant to a written lease agreement, provided such agreement
202 at inception is for a period in excess of three months.

203 "Recorded data" means the data stored or preserved electronically in a recording device identifying
204 performance or operation information about the motor vehicle including, but not limited to:

- 205 1. *Speed of the motor vehicle or the direction in which the vehicle is traveling, or both;*
- 206 2. *Vehicle location data;*
- 207 3. *Vehicle steering performance;*
- 208 4. *Vehicle brake performance including, but not limited to, whether brakes were applied before a*
209 *crash;*

- 210 5. *The driver's seatbelt status; and*

- 211 6. *Information concerning a crash in which the motor vehicle has been involved, including the ability*
212 *to transmit such information to a central communications system.*

213 "Recording device" means an electronic system, and the physical device or mechanism containing the
214 electronic system, that primarily, or incidental to its primary function, preserves or records, in
215 electronic form, data collected by sensors or provided by other systems within the vehicle. "Recording
216 device" includes event data recorders (EDRs), sensing and diagnostic modules (SDMs), electronic
217 control modules (ECMs), automatic crash notification (ACN) systems, geographic information systems
218 (GIS), and any other device that records and preserves data that can be accessed related to that vehicle.

219 B. *Recorded data may only be accessed by the motor vehicle owner or with the consent of the motor*
220 *vehicle owner or the owner's agent or legal representative; except under the following circumstances:*

- 221 1. *The owner of the motor vehicle has a contract with a third-party subscription service that requires*
222 *access to a recording device or recorded data in order to perform the contract, so long as the recorded*
223 *data is only accessed and used in accordance with the contract;*

- 224 2. *A licensed new motor vehicle dealer, or a technician or mechanic at a motor vehicle repair or*
225 *servicing facility requires access to recorded data in order to carry out his normal and ordinary*
226 *diagnosing, servicing, and repair duties and such recorded data is used only to perform such duties;*

- 227 3. *The recorded data is accessed by an emergency response provider and is used only for the*
228 *purpose of determining the need for or facilitating an emergency response. Such persons are authorized*
229 *to receive data transmitted or communicated by any electronic system of a motor vehicle that constitutes*
230 *an automatic crash notification system and utilizes or reports data provided by or recorded by*
231 *recording devices installed on or attached to a motor vehicle to assist them in performing their duties as*
232 *emergency response providers;*

- 233 4. *Upon authority of a court of competent jurisdiction; or*

- 234 5. *The recorded data is accessed by law enforcement in the course of an investigation where*
235 *constitutionally permissible and in accordance with any applicable law regarding searches and seizures*
236 *upon probable cause to believe that the recording device contains evidence relating to a violation of the*
237 *laws of the Commonwealth or the United States.*

238 C. *The consent of the motor vehicle owner or the owner's agent or legal representative for use of*
239 *recorded data for purposes of investigating a motor vehicle accident or insurance claim shall not be*
240 *requested or obtained until after the event giving rise to the claim has occurred, and shall not be made*
241 *a condition of the defense, payment or settlement of an obligation or claim. For underwriting and rating*
242 *purposes, the motor vehicle owner may provide his consent either directly to the insurer or through and*
243 *as certified by a named insured.*

244 D. *If a person or entity accesses recorded data pursuant to subdivisions B 2 or B 3, such entity or*

245 person shall not transmit or otherwise convey the recorded data to a third party unless necessary to
 246 carry out their duties thereunder.

247 E. When the recording device and recorded data are not removed or separated from the motor
 248 vehicle, the ownership of the recording device and recorded data survives the sale of the motor vehicle
 249 to any nonbeneficial owner such as an insurer, salvage yard, or other person who does not possess and
 250 use the motor vehicle for normal transportation purposes.

251 F. The failure of an insurer to obtain access to the recorded data shall not create, nor shall it be
 252 construed to create, an independent or private cause of action in favor of any person.

253 § 46.2-1532.2. Certain disclosures required by motor vehicle manufacturers; motor vehicle recording
 254 devices.

255 A. A manufacturer of a new vehicle sold or leased in the Commonwealth that is equipped with one
 256 or more recording devices, as defined in § 46.2-1088.6, installed by the manufacturer shall disclose that
 257 fact in the owner's manual for the vehicle.

258 B. The provisions of this section shall apply only to vehicles manufactured for 2008 and subsequent
 259 model years.