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HOUSE BILL NO. 2908

Offered January 10, 2007

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A BILL to amend and reenact § 38.2-2212 of the Code of Virginia, relating to grounds for increasing premiums on motor vehicle insurance policies.

Patrons—Spruill, Armstrong, Dance, Jones, D.C. and Ward

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:**1. That § 38.2-2212 of the Code of Virginia is amended and reenacted 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~~ *The provisions of this section, other than subsection L, 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;

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59 1. Lack of supporting business or lack of the potential for acquiring such business;
60 m. One or more accidents or violations that occurred more than 48 months immediately preceding
61 the upcoming anniversary date;
62 n. One or more claims submitted under the uninsured motorists coverage of the policy where the
63 uninsured motorist is known or there is physical evidence of contact;
64 o. A single claim by a single insured submitted under the medical expense coverage due to an
65 accident for which the insured was neither wholly nor partially at fault;
66 p. One or more claims submitted under the comprehensive or towing coverages. However, nothing in
67 this section shall prohibit an insurer from modifying or refusing to renew the comprehensive or towing
68 coverages at the time of renewal of the policy on the basis of one or more claims submitted by an
69 insured under those coverages, provided that the insurer shall mail or deliver to the insured at the
70 address shown in the policy written notice of any such change in coverage at least 45 days prior to the
71 renewal;
72 q. Two or fewer motor vehicle accidents within a three-year period unless the accident was caused
73 either wholly or partially by the named insured, a resident of the same household, or other customary
74 operator;
75 r. Credit information contained in a "consumer report," as defined in the federal Fair Credit
76 Reporting Act, 15 U.S.C. § 1681 et seq., bearing on a natural person's creditworthiness, credit standing
77 or credit capacity. If credit information is used, in part, as the basis for the nonrenewal, such credit
78 information shall be based on a consumer report procured within 120 days from the effective date of the
79 nonrenewal. The provisions of this subdivision shall apply only to insurance purchased primarily for
80 personal, family, or household purposes; or
81 s. The refusal of a motor vehicle owner as defined in § 46.2-1088.6 to provide access to recorded
82 data from a recording device as defined in § 46.2-1088.6.

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

88 D. No insurer shall cancel a policy except for one or more of the following reasons:
89 1. The named insured or any other operator who either resides in the same household or customarily
90 operates a motor vehicle insured under the policy has had his driver's license suspended or revoked
91 during the policy period or, if the policy is a renewal, during its policy period or the 90 days
92 immediately preceding the last effective date.
93 2. The named insured fails to pay the premium for the policy or any installment of the premium,
94 whether payable to the insurer or its agent either directly or indirectly under any premium finance plan
95 or extension of credit.
96 3. The named insured or his duly constituted attorney-in-fact has notified the insurer of a change in
97 the insured's legal residence to a state other than Virginia and the insured vehicle will be principally
98 garaged in the new state of legal residence.

99 E. No cancellation or refusal to renew by an insurer of a policy of motor vehicle insurance shall be
100 effective unless the insurer delivers or mails to the named insured at the address shown in the policy a
101 written notice of the cancellation or refusal to renew. The notice shall:
102 1. Be in a type size authorized under § 38.2-311.
103 2. State the effective date of the cancellation or refusal to renew. The effective date of cancellation
104 or refusal to renew shall be at least 45 days after mailing or delivering to the insured the notice of
105 cancellation or notice of refusal to renew. However, when the policy is being canceled or not renewed
106 for the reason set forth in subdivision 2 of subsection D of this section the effective date may be less
107 than 45 days but at least 15 days from the date of mailing or delivery.
108 3. State the specific reason of the insurer for cancellation or refusal to renew and provide for the
109 notification required by §§ 38.2-608, 38.2-609, and subsection B of § 38.2-610. However, those
110 notification requirements shall not apply when the policy is being canceled or not renewed for the
111 reason set forth in subdivision 2 of subsection D of this section.
112 4. Inform the insured of his right to request in writing within 15 days of the receipt of the notice that
113 the Commissioner review the action of the insurer.

114 The notice of cancellation or refusal to renew shall contain the following statement to inform the
115 insured of such right:
116 **IMPORTANT NOTICE**
117 Within 15 days of receiving this notice, you or your attorney may request in writing that the
118 Commissioner of Insurance review this action to determine whether the insurer has complied with
119 Virginia laws in canceling or nonrenewing your policy. If this insurer has failed to comply with the
120 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 a *premium increase*, 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 *premium increase*, 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 *premium increase prohibited under subsection L*, 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 *increasing the premium*, 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 *premium increase*, 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 *premium increase*, 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 *increase*, 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 Commissioner 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

182 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 *L. No insurer shall increase the premium for renewal of a policy of motor vehicle insurance as a*
186 *result of any claim made under the policy due to an accident for which the insured was neither wholly*
187 *nor partially at fault.*