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HOUSE BILL NO. 636

Offered January 9, 2008

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A BILL to amend and reenact §§ 38.2-231, 38.2-2113, 38.2-2114, 38.2-2208, and 38.2-2212 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 38.2-230.1, relating to the provision of certain insurance notices by electronic transmission.

 Patron—May

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 38.2-231, 38.2-2113, 38.2-2114, 38.2-2208, and 38.2-2212 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 38.2-230.1, as follows:

§ 38.2-230.1. Notices.

A. For purposes of provisions of this title applicable to contracts or policies of any of the classes of insurance set out in §§ 38.2-102 through 38.2-107, 38.2-110 through 38.2-118, 38.2-124 through 38.2-132, and 38.2-137:

1. Notice shall be in writing. Notice transmitted electronically is written notice.

2. Notice may be communicated in person; by mail or other method of delivery; or by telephone, voice mail, or other means of electronic transmission.

3. Written notice by an insurer to its insured, policyholder, or applicant, if in a comprehensible form, is effective (i) at the earlier of (a) the time of receipt, if transmitted via mail, postpaid and correctly addressed to the person's address shown in the current record of the insurer, or (b) the date shown on the return receipt if sent by registered or certified mail, return receipt requested, and the receipt is signed by or on behalf of the addressee, or (ii) when electronically transmitted to the insured, policyholder, or applicant in a manner authorized by such person.

4. When this title prescribes notice requirements for particular circumstances, those requirements govern.

5. Without limiting the manner by which notice otherwise may be given effectively to insureds, policyholders, or applicants, any notice to such a person given by the insurer under any provision of this title shall be effective if given by a form of electronic transmission consented to by the insured, policyholder, or applicant to whom the notice is given. Any such consent shall be revocable by the insured, policyholder, or applicant by written notice to the insurer. Notice given pursuant to this subdivision shall be deemed given: (a) if by facsimile telecommunication, when directed to a number at which the insured, policyholder, or applicant has consented to receive notice; (b) if by electronic mail, when directed to an electronic mail address at which the insured, policyholder, or applicant has consented to receive notice; (c) if by a posting on an electronic network together with separate notice to the insured, policyholder, or applicant of such specific posting, when the posting is made and such notice is directed to the electronic mail address at which the insured, policyholder, or applicant has consented to receive notice; or (d) if by any other form of electronic transmission, when consented to by the insured, policyholder, or applicant. Notice transmitted by facsimile telecommunication shall be presumed to have been delivered to the insured, policyholder, or applicant if it was sent to the a number at which the insured, policyholder, or applicant has consented to receive notice and a report generated by the facsimile transmitter noted that the transmission was successful. Notice transmitted by electronic mail shall be presumed to have been delivered to the insured, policyholder, or applicant if it was sent to the electronic mail address that the insured, policyholder, or applicant has provided and it was not returned to the insurer as "undeliverable." Notice transmitted by posting on an electronic network together with separate notice to the insured, policyholder, or applicant of such specific posting shall be presumed to have been delivered to the insured, policyholder, or applicant if the insured, policyholder, or applicant has agreed to accept delivery at a secure Internet site and evidence is provided that the document was made available at such secure site and that a separate notice to the insured, policyholder, or applicant of such specific posting was provided by the insurer.

6. If an insured, policyholder, or applicant asserts non-delivery of a notice transmitted electronically, or if electronic transmittal is defective for any reason under applicable law, the sender may cure any actual or alleged defect by prompt redelivery of the notice without such defect, provided the insured, policyholder, or applicant was not prejudiced by the delay in delivery of the particular notice.

B. As used in this section, the giving of notice includes, where applicable, the delivery of a document

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59 *or statement.*

60 *C. This section shall not apply to any notice to or from the Commission.*

61 § 38.2-231. Notice of cancellation, refusal to renew, reduction in coverage or increase in premium of
62 certain liability insurance policies.

63 A. 1. No cancellation or refusal to renew by an insurer of (i) a policy of insurance as defined in
64 § 38.2-117 or 38.2-118 insuring a business entity; (ii) a policy of insurance that includes as a part
65 thereof insurance as defined in § 38.2-117 or 38.2-118 insuring a business entity; (iii) a policy of motor
66 vehicle insurance against legal liability of the insured as defined in § 38.2-124 insuring a business entity;
67 or (iv) a policy of miscellaneous casualty insurance as defined in subsection B of § 38.2-111 insuring a
68 business entity, shall be effective unless the insurer delivers or mails to the named insured at the address
69 shown on the policy, *or gives to the named insured in a form of electronic transmission consented to by*
70 *the named insured*, a written notice of cancellation or refusal to renew. Such notice shall:

71 a. Be in a type size authorized under § 38.2-311 *if sent by means other than a form of electronic*
72 *transmission*;

73 b. State the date, which shall not be less than 45 days after the delivery or mailing of the notice of
74 cancellation or refusal to renew, on which such cancellation or refusal to renew shall become effective,
75 except that such effective date may not be less than 15 days from the date of mailing or delivery when
76 the policy is being cancelled or not renewed for failure of the insured to discharge when due any of its
77 obligations in connection with the payment of premium for the policy;

78 c. State the specific reason or reasons of the insurer for cancellation or refusal to renew;

79 d. Advise the insured of its right to request in writing, within 15 days of the receipt of the notice,
80 that the Commissioner of Insurance review the action of the insurer; and

81 e. In the case of a policy of motor vehicle insurance, inform the insured of the possible availability
82 of other insurance which may be obtained through its agent, through another insurer, or through the
83 Virginia Automobile Insurance Plan.

84 2. Nothing in this subsection shall apply to any policy of insurance if the named insured or his duly
85 constituted attorney-in-fact has notified orally, or in writing, if the insurer requires such notification to
86 be in writing, the insurer or its agent that he wishes the policy to be canceled or that he does not wish
87 the policy to be renewed, or if, prior to the date of expiration, he fails to accept the offer of the insurer
88 to renew the policy.

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

92 C. No reduction in coverage for personal injury or property damage liability initiated by an insurer
93 and no insurer-initiated increase in the premium greater than 25 percent of (i) a policy of insurance
94 defined in § 38.2-117 or 38.2-118 insuring a business entity; (ii) a policy of insurance that includes as a
95 part thereof insurance defined in § 38.2-117 or 38.2-118 insuring a business entity; (iii) a policy of
96 motor vehicle insurance against legal liability of the insured as defined in § 38.2-124 insuring a business
97 entity; or (iv) a policy of miscellaneous casualty insurance as defined in subsection B of § 38.2-111
98 insuring a business entity, and which in the case of a reduction in coverage is subject to § 38.2-1912,
99 shall be effective unless the insurer delivers or mails to the named insured at the address shown on the
100 policy, *or gives to the named insured in a form of electronic transmission consented to by the named*
101 *insured*, a written notice of such reduction in coverage or premium increase not later than 45 days prior
102 to the effective date of same. The increase in premium shall be the difference between the renewal
103 premium and the premium charged by the insurer at the effective date of the expiring policy. Such
104 notice shall:

105 1. Be in a type size authorized under § 38.2-311 *if sent by means other than a form of electronic*
106 *transmission*;

107 2. State the date, which shall not be less than 45 days after the delivery or mailing of the notice of
108 reduction in coverage or increase in premium, on which such reduction in coverage or increase in
109 premium shall become effective;

110 3. Advise the named insured of the specific reason for the increase and the amount of the increase,
111 or, if in the case of a reduction in coverage, the specific reason for the reduction and the manner in
112 which coverage will be reduced, or that such information may be obtained from the agent or the insurer;

113 4. Advise the insured of its right to request in writing, within 15 days of receipt of the notice, that
114 the Commissioner of Insurance review the action of the insurer.

115 D. If an insurer does not provide notice in the manner required in subsection C, coverage shall
116 remain in effect until 45 days after written notice of reduction in coverage or increase in premium is
117 mailed or delivered to the insured at the address shown on the policy, *or given to the insured in a form*
118 *of electronic transmission consented to by the insured*, unless the insured obtains replacement coverage
119 or elects to cancel sooner in either of which cases coverage under the prior policy shall cease on the
120 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 rates, terms and conditions as applied against the renewal policy's limits, rating exposures, and additional coverages. If the insured accepts the changed policy, the reduction in coverage or increase in premium shall take effect upon the expiration of the prior policy.

E. Notice of reduction in coverage or increase in premium shall not be required if:

1. 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, *or given to the named insured in a form of electronic transmission consented to by the insured*, sufficient information from the insured to provide the required notice;

2. Such notice is waived in writing by the insured;

3. The insurer delivers or mails to the named insured a renewal policy or a renewal offer not less than 45 days prior to the effective date of the policy or, in the case of a medical malpractice insurance policy, not less than 90 days prior to the effective date of the policy;

4. The policy is issued to a large commercial risk as defined in subsection C of § 38.2-1903.1 but excluding policies of medical malpractice insurance; or

5. The policy is retrospectively rated, where the premium is adjusted at the end of the policy period to reflect the risk's actual loss experience.

F. No written notice of cancellation, refusal to renew, reduction in coverage or increase in 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 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 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 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.

The provisions of this subsection shall not apply to a notice of cancellation, refusal to renew, reduction in coverage, or increase in premium that is sent in a form of electronic transmission where the insurer and insured have agreed that such notice may be transmitted electronically, which agreement addresses the means of transmitting the notification.

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 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

182 the Virginia Automobile Insurance Plan, (b) any policy providing insurance only on an excess basis, or
183 (c) any other contract providing insurance to the named insured even though the contract may
184 incidentally provide insurance on motor vehicles; and (iii) "reduction in coverage" shall mean, but not
185 be limited to, any diminution in scope of coverage, decrease in limits of liability, addition of exclusions,
186 increase in deductibles, or reduction in the policy term or duration except a reduction in coverage filed
187 with and approved by the Commission and applicable to an entire line, classification or subclassification
188 of insurance.

189 I. Within 15 days of receipt of the notice of cancellation, refusal to renew, reduction in coverage or
190 increase in premium, the insured shall be entitled to request in writing to the Commissioner that he
191 review the action of the insurer. Upon receipt of the request, the Commissioner shall promptly begin a
192 review to determine whether the insurer's notice of cancellation, refusal to renew, reduction in coverage
193 or premium increase complies with the requirements of this section. Where the Commissioner finds from
194 the review that the notice of cancellation, refusal to renew, reduction in coverage or premium increase
195 does not comply with the requirements of this section, he shall immediately notify the insurer, the
196 insured and any other person to whom such notice was required to be given by the terms of the policy
197 that such notice is not effective. Nothing in this section authorizes the Commissioner to substitute his
198 judgment as to underwriting for that of the insurer. Pending review by the Commission, this section
199 shall not operate to relieve an insured from the obligation to pay any premium when due; however, if
200 the Commission finds that the notice required by this section was not proper, the Commission may order
201 the insurer to pay to the insured any overpayment of premium made by the insured.

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

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

211 L. Notwithstanding anything in this section to the contrary, if an insurer cancels or refuses to renew
212 a policy of medical malpractice insurance as defined in § 38.2-2800, or if, as a result of an
213 insurer-initiated increase in premium, the premium increases for a medical malpractice insurance policy
214 by more than 25 percent of the previous policy's premium, the insurer shall provide no fewer than 90
215 days notice prior to the renewal effective date, or, if such policy is being cancelled or non-renewed for
216 failure of the insured to discharge when due any of its obligations in connection with the payment of
217 premium for the policy, the effective date of cancellation or refusal to renew shall not be less than 15
218 days from the date of mailing or *other* delivery of the notice. The increase in the premium shall be the
219 difference between the renewal premium and the premium charged by the insurer at the effective date of
220 the expiring policy.

221 M. As used in this section, an "insurer-initiated increase in premium" means an increase in premium
222 other than one resulting from changes in (i) coverage requested by the insured, (ii) policy limits
223 requested by the insured, (iii) the insured's operation or location that result in a change in the
224 classification of the risk, or (iv) the rating exposures including, but not limited to, increases in payroll,
225 receipts, square footage, number of automobiles insured, or number of employees.

226 § 38.2-2113. Mailing or other delivery of notice of cancellation or refusal to renew.

227 A. No written notice of cancellation or refusal to renew a policy written to insure owner-occupied
228 dwellings shall be effective when mailed by an insurer unless:

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

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

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

237 2. The insurer retains a copy of the notice of cancellation or refusal to renew.

238 3. —Repealed.]

239 B. This section shall not apply to policies written through the Virginia Property Insurance
240 Association or any other residual market facility established pursuant to Chapter 27 (§ 38.2-2700 et seq.)
241 of this title.

242 C. 1. If the terms of the policy require the notice of cancellation or refusal to renew to be given to
243 any lienholder, then the insurer shall mail such notice and retain a copy of the notice in the manner

required by subsection A of this section. 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 copy of the notices required by this section shall be retained by the insurer for at least one year from the date of termination.

2. Notwithstanding the provisions of subdivision C 1, if the terms of the policy require the notice of cancellation or refusal to renew 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.

D. The provisions of subsection A shall not apply with respect to a notice of cancellation or refusal to renew where the insurer and the insured have agreed that such notices may be transmitted electronically, which agreement addresses the means of transmitting the notification.

E. Copy, as used in this section, 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.

§ 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 (i) written notice is mailed or delivered to the named insured at the address stated in the policy or (ii) *notice is transmitted electronically in the manner upon which they have agreed when the insurer and named insured have agreed that such notices may be transmitted electronically*, 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 (i) mails or delivers to the named insured, at the address stated in the policy, or (ii) *transmits electronically to the named insured in the manner upon which they have agreed when the insurer and named insured have agreed that such notices may be transmitted electronically*, 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 30 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 30 days but at least 10 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 10 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 *if sent by means other than a form of electronic transmission.*

D. Within 10 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

305 cancellation or refusal to renew is for reason of nonpayment of premium, in which case the policy shall
306 terminate as of the date stated in the notice. Where the Commissioner finds from the review that the
307 cancellation or refusal to renew has not complied with the requirements of this section or of
308 § 38.2-2113, if sent by mail, he shall immediately notify the insurer, the insured, and any other person
309 to whom notice of cancellation or refusal to renew was required to be given by the terms of the policy
310 that the cancellation or refusal to renew is not effective. Nothing in this section authorizes the
311 Commissioner to substitute his judgment as to underwriting for that of the insurer.

312 E. Nothing in this section shall apply:

313 1. To any policy written to insure owner-occupied dwellings that has been in effect for less than 90
314 days when the notice of termination is mailed or delivered to the insured, unless it is a renewal policy;

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

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

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

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

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

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

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

- 339 1. Age;
340 2. Sex;
341 3. Residence;
342 4. Race;
343 5. Color;
344 6. Creed;
345 7. National origin;
346 8. Ancestry;
347 9. Marital status;

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

351 11. Credit information contained in a "consumer report," as defined in the federal Fair Credit
352 Reporting Act, 15 U.S.C. § 1681 et seq., bearing on a natural person's creditworthiness, credit standing
353 or credit capacity. If credit information is used, in part, as the basis for the nonrenewal, such credit
354 information shall be based on a consumer report procured within 120 days from the effective date of the
355 nonrenewal;

356 12. Any claim resulting primarily from natural causes;

357 13. One or more claims that were incurred more than 60 months immediately prior to the expiration
358 of the current policy period; or

359 14. Any inquiry from an insured about his insurance coverage or policy provisions. For purposes of
360 this subdivision, "inquiry" means a written or oral communication by an insured seeking information
361 regarding coverage or policy provisions that does not notify the insurer of a loss, incident or accident,
362 and that does not provide information indicating an increase in the hazard insured against. An insurer
363 shall not report any inquiry as a claim to a loss history database maintained by a consumer reporting
364 agency or insurance support organization.

365 Nothing in this section prohibits any insurer from setting rates in accordance with relevant actuarial
366 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.

§ 38.2-2208. Notices of cancellation or refusal to renew motor vehicle insurance policies.

A. No written notice of cancellation or refusal to renew that is mailed by an insurer to an insured in accordance with the provisions of a motor vehicle insurance policy 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 or refusal to renew.

3. —Repealed.]

B. 1. If the terms of the policy require the notice of cancellation or refusal to renew 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 subsection A of this section. 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 section shall be retained by the insurer for at least one year from the date of termination.

2. Notwithstanding the provisions of subdivision B 1, if the terms of the policy require the notice of cancellation or refusal to renew 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.

C. The provisions of subsection A shall not apply with respect to a notice of cancellation or refusal to renew where the insurer and the insured have agreed that such notices may be transmitted electronically, which agreement addresses the means of transmitting the notification.

D. Copy, as used in this section, 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.

§ 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;
- 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 48 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 (i) mail or deliver to the insured at the address shown in the policy or (ii) *transmit electronically to the named insured in the manner upon which they have agreed when the insurer and named insured have agreed that such a notice may be transmitted electronically*, written notice of any such change in coverage at least 45 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;
- 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. 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; or

s. The refusal of a motor vehicle owner as defined in § 46.2-1088.6 to provide access to recorded data from a recording device as defined in § 46.2-1088.6.

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 90 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 (i) delivers or mails to the named insured at the address shown in the policy, or (ii) transmits electronically to the named insured in the manner upon which they have agreed when the insurer and named insured have agreed that such a notice may be transmitted electronically, a written notice of the cancellation or refusal to renew. The notice shall:

1. Be in a type size authorized under § 38.2-311 if sent by means other than a form of electronic transmission.

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 45 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 45 days but at least 15 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 15 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 15 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 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

551 except where the cancellation or refusal to renew is for the reason set forth in subdivision 2 of
552 subsection D of this section, in which case the policy shall terminate as of the effective date stated in
553 the notice. Where the Commissioner finds from the review that the cancellation or refusal to renew has
554 not complied with the requirements of this section or of § 38.2-2208, he shall immediately notify the
555 insurer, the insured and any other person to whom such notice was required to be given by the terms of
556 the policy that the cancellation or refusal to renew is not effective. Nothing in this section authorizes the
557 Commissioner to substitute his judgment as to underwriting for that of the insurer. Where the
558 Commissioner finds in favor of the insured, the Commission in its discretion may award the insured
559 reasonable attorneys' fees.

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

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

569 K. Notwithstanding any other provision of this section, a motor vehicle insurance policy with a
570 policy period or term of five months or less may expire at its expiration date when the insurer has
571 manifested in writing its willingness to renew the policy for at least 30 days and has mailed the written
572 manifestation to the insured at least 15 days before the expiration date of the policy. The written
573 manifestation shall include the name of the proposed insurer, the expiration date of the policy, the type
574 of insurance coverage, and the estimated renewal premium. The insurer shall retain a copy of the written
575 manifestation for at least one year from the expiration date of any policy that is not renewed.