

VIRGINIA ACTS OF ASSEMBLY -- 2009 SESSION

CHAPTER 215

An Act 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 in Chapter 3 of Title 38.2 a section numbered 38.2-325, relating to the provision of certain insurance notices by electronic transmission.

[H 2430]

Approved March 27, 2009

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 in Chapter 3 of Title 38.2 a section numbered 38.2-325 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 (i) a policy of insurance as defined in § 38.2-117 or 38.2-118 insuring a business entity; (ii) a policy of insurance that includes as a part thereof insurance as defined in § 38.2-117 or 38.2-118 insuring a business entity; (iii) a policy of motor vehicle insurance against legal liability of the insured as defined in § 38.2-124 insuring a business entity; or (iv) a policy of miscellaneous casualty insurance as defined in subsection B of § 38.2-111 insuring a business entity, shall be effective unless the insurer delivers or mails to the named insured at the address shown on the policy a written notice of cancellation or refusal to renew; *however, if the written notice is a notice of refusal to renew, it may be delivered electronically to the address provided by the named insured.* 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.

3. Nothing in this subsection shall apply if an affiliated insurer has manifested its willingness to provide coverage at a lower premium than would have been charged for the same exposures on the expiring policy. The affiliated insurer shall manifest its willingness to provide coverage by issuing a policy with the types and limits of coverage at least equal to those contained in the expiring policy unless the named insured has requested a change in coverage or limits. When such offer is made by an affiliated insurer, an offer of renewal shall not be required of the insurer of the expiring policy, and the policy issued by the affiliated insurer shall be deemed to be a renewal 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 insurer-initiated increase in the premium greater than 25 percent of (i) a policy of insurance defined in § 38.2-117 or 38.2-118 insuring a business entity; (ii) a policy of insurance that includes as a part thereof insurance defined in § 38.2-117 or 38.2-118 insuring a business entity; (iii) a policy of motor vehicle insurance against legal liability of the insured as defined in § 38.2-124 insuring a business entity; or (iv) a policy of miscellaneous casualty insurance as defined in subsection B of § 38.2-111 insuring a business entity, and which in the case of a reduction in coverage is subject to § 38.2-1912, shall be effective unless the insurer delivers or mails to the named insured at the address shown on the policy, *or delivers electronically to the address provided by the named insured*, a written notice of such reduction in coverage or 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 premium, on which such reduction in coverage or increase in premium shall become effective;
3. Advise the named insured of 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, or that such information may be obtained from the agent or the insurer;
4. 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.

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 premium is mailed or delivered to the insured at the address shown on the policy, *or delivered electronically to the address provided by the named insured*, 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 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 delivered electronically to the address provided by the named 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, *or delivered electronically when authorized for a notice other than a notice of cancellation*, 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~~, or
- d. *If delivered electronically, the insurer retains evidence of electronic transmittal or receipt of the notification for at least one year from the date of the transmittal; 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.

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 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 increase in premium, the insured shall be entitled to request in writing to the Commissioner that he review the action of the insurer. Upon receipt of the request, the Commissioner shall promptly begin a review to determine whether the insurer's notice of cancellation, refusal to renew, reduction in coverage or premium increase complies with the requirements of this section. Where the Commissioner finds from the review that the notice of cancellation, refusal to renew, reduction in coverage or premium increase does not comply with the requirements of this section, 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 such notice is not effective. Nothing in this section authorizes the Commissioner to substitute his judgment as to underwriting for that of the insurer. Pending review by the Commission, this section shall not operate to relieve an insured from the obligation to pay any premium when due; however, if the Commission finds that the notice required by this section was not proper, the Commission may order the insurer to pay to the insured any overpayment of premium made by the insured.

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

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

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

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

§ 38.2-325. Electronic delivery.

A. If parties have agreed to conduct business by electronic means, and the agent of record, if applicable, has been so notified by the insurer, any information that is required to be delivered in writing, other than a notice of cancellation of a policy, may be delivered by (i) placing such information within the body of the electronic message; (ii) placing such information as an attachment to the electronic message that may be opened through the use of software that is readily available; (iii) displaying the information, or a clear and conspicuous link to the information, as an essential step to

completing the transaction to which the information relates; or (iv) placing such information on the insurer's secured server and an electronic message is provided advising that insurance information or, when appropriate, time-sensitive insurance information has been placed on the insurer's secured server and is available for retrieval. This section should be construed to be consistent with the Electronic Signatures in Global and National Commerce Act (15 U.S.C. § 7001 et seq.).

B. If parties have agreed to conduct business by electronic means, and notice is provided by the insurer to the named insured pursuant to § 38.2-231, 38.2-2113, 38.2-2114, 38.2-2208, or 38.2-2212, an electronic notification shall also be provided to the agent of record of the named insured, if the named insured has an agent of record. Such electronic notification shall be transmitted to the agent of record as soon as practicable, but in no case more than 72 hours after electronic notice is transmitted to the named insured.

C. The insurer shall retain evidence of electronic notification to the agent of record for at least one year from the date of transmittal. Failure to provide such notice to the agent of record shall not be deemed to invalidate any electronic notice otherwise properly provided to the named insured. For purposes of this section, an electronic notification to the agent of record shall mean a copy of the actual notice, as set forth herein, or in the alternative, shall include the named insured's name, policy number, and termination date. Electronic notice need not be given to the agent of record if the agent (i) is an employee of the insurer, (ii) is a non-employee exclusive agent of the insurer, or (iii) has waived the receipt of such notices in writing.

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

A. No written notice of cancellation or refusal to renew a policy written to insure owner-occupied dwellings shall be effective when mailed, or delivered electronically if the notice is of a refusal to renew such a policy, by an insurer 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, or~~

d. If delivered electronically, the insurer retains evidence of electronic transmittal or receipt of the notification for at least one year from the date of the transmittal; and

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

3. [Repealed.]

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

C. 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 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. 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 written notice is mailed or delivered to the named insured at the address stated in the policy, 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 mails or delivers to the named insured, at the address stated in the policy, *or delivers electronically to the address provided by the named insured*, 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.

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, *or delivered electronically if a notice of refusal to renew*. 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 reason of nonpayment of premium, in which case the policy shall terminate as of the 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 § 38.2-2113, if sent by mail *or delivered electronically if a notice of refusal to renew*, he shall immediately notify the insurer, the insured, and any other person to whom notice of cancellation or refusal to renew 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.

E. Nothing in this section shall apply:

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

2. 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 otherwise 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;

3. 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;

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

5. If an affiliated insurer has manifested its willingness to provide coverage at a lower premium than would have been charged for the same exposures on the expiring policy. The affiliated insurer shall manifest its willingness to provide coverage by issuing a policy with the types and limits of coverage at least equal to those contained in the expiring policy unless the named insured has requested a change in coverage or limits. When such offer is made by an affiliated insurer, an offer of renewal shall not be required of the insurer of the expiring policy, and the policy issued by the affiliated insurer shall be deemed to be a renewal policy.

F. 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.

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 representative, its agents, or its employees; or any firm, person or corporation 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.

H. Nothing in this section requires an insurer to renew a policy written to insure owner-occupied dwellings, 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.

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

1. Age;
2. Sex;
3. Residence;
4. Race;
5. Color;
6. Creed;
7. National origin;
8. Ancestry;
9. Marital status;

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

11. 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;

12. Any claim resulting primarily from natural causes;

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

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

Nothing in this section prohibits any insurer from setting rates in accordance with relevant actuarial 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 of or refusal to renew motor vehicle insurance policies.

A. No written notice of cancellation or refusal to renew that is mailed, *or delivered electronically if the notice is of a refusal to renew*, 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, or~~

d. If it is a notice of refusal to renew that is delivered electronically, the insurer retains evidence of electronic transmittal or receipt of the notification for at least one year from the date of the transmittal; 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. 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 mail or deliver to the insured at the address shown in the policy, *or deliver electronically to the address provided by the named insured*, 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 delivers or mails to the named insured at the address shown in the policy a written notice of the cancellation, or *if the notice is of a refusal to renew such a policy, the insurer delivers electronically to the address provided by the named insured the notice of refusal to renew*. The notice shall:

1. Be in a type size authorized under § 38.2-311.

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, *or delivered electronically if it is a notice of refusal to renew*, 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;

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; or

4. If an affiliated insurer has manifested its willingness to provide coverage at a lower premium than would have been charged for the same exposures on the expiring policy. The affiliated insurer shall manifest its willingness to provide coverage by issuing a policy with the types and limits of coverage at least equal to those contained in the expiring policy unless the named insured has requested a change in coverage or limits. When such offer is made by an affiliated insurer, an offer of renewal shall not be required of the insurer of the expiring policy, and the policy issued by the affiliated insurer shall be deemed to be 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 *or delivered electronically if it is a notice of refusal to renew*. 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 *or delivered* 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 of insurance coverage, and the estimated renewal premium. The insurer shall retain a copy of the written manifestation for at least one year from the expiration date of any policy that is not renewed.