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HOUSE BILL NO. 77

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the House Committee on Commerce and Labor
on January 28, 2010)

(Patron Prior to Substitute—Delegate Ware, R.L.)

A BILL to amend and reenact §§ 38.2-3724 and 38.2-3735 of the Code of Virginia, relating to credit life insurance disclosures.

Be it enacted by the General Assembly of Virginia:

1. That §§ 38.2-3724 and 38.2-3735 of the Code of Virginia are amended and reenacted as follows:

§ 38.2-3724. Policy provisions; disclosure to debtors; delivery of policy or certificate.

A. Credit life insurance and credit accident and sickness insurance shall be evidenced by an individual policy, or in the case of group insurance by a certificate of insurance. The policy or certificate of insurance shall: (i) be a document separate and apart from the loan or credit agreement, (ii) refer exclusively to the insurance coverage, and (iii) be delivered to the debtor.

B. Each policy or certificate of credit life insurance or credit accident and sickness insurance shall set forth:

1. The name and address of the insurer;

2. The name or names of the debtor or, in the case of a certificate, the identity by name or otherwise of the debtor;

3. The age or date of birth of the debtor(s);

4. The premium or amount payable by the debtor separately for credit life insurance and credit accident and sickness insurance;

5. A description of the coverage including the amount and term of the coverage, and any exceptions, limitations or restrictions;

6. A statement that the benefits shall be paid to the creditor to reduce or extinguish the unpaid indebtedness; and

7. A statement that if the amount of insurance exceeds the amount necessary to discharge the indebtedness, any such excess shall be payable to a beneficiary, other than the creditor, named by the debtor or to his estate.

C. A credit life or credit accident and sickness insurance policy or certificate, which provides truncated or critical period coverage or any other type of similar coverage that does not provide benefits or coverage for the entire term or amount of the indebtedness, shall be subject to the following requirements:

1. The credit life or credit accident and sickness insurance policy or certificate shall include a statement printed on the face of the policy or first page of the certificate which clearly describes the limited nature of the insurance. The statement shall be printed in capital letters and in bold twelve-point or larger type; and

2. The credit life or credit accident and sickness insurance policy or certificate shall not include any benefits or coverage other than truncated or critical period coverage or any other type of similar coverage that does not provide benefits or coverage for the entire term or amount of the indebtedness.

D. No individual or group credit life insurance or credit accident and sickness insurance policy shall be delivered or issued for delivery in this Commonwealth unless the policy complies with the following requirements:

1. Each policy shall contain a provision (i) that the policy, or the policy and any application endorsed upon or attached to the policy when issued, shall constitute the entire contract between the parties, and (ii) that all statements made by the creditor or by the individual debtors shall, in the absence of fraud, be deemed representations and not warranties;

2. Each policy shall contain a provision that the validity of the policy shall not be contested, except for nonpayment of premiums, after it has been in force for two years from its date of issue; and that no statement made by any person insured under the policy relating to his insurability shall be used in contesting the validity of the insurance with respect to which such statement was made after the insurance has been in force for a period of two years during such person's lifetime, and prior to the date on which the claim thereunder arose;

3. Each policy shall contain a provision that when a claim for the death or disability of the insured arises, settlement shall be made upon receipt of due proof of such death or disability;

4. On the face of each policy and certificate there shall be a title that briefly and accurately describes the nature and form of the policy;

5. Each policy and certificate, including any rider or endorsement, shall be identified by a form number in the lower lefthand corner of the first page of the form. The type size of the text of the policy

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60 form or certificate, including any rider and endorsement, shall not be less than ten-point type, one-point
61 leaded;

62 6. Each individual policy or group certificate shall meet the readability standards established by the
63 Commission;

64 7. Each individual policy and certificate shall have printed on it a notice stating in substance that if,
65 during a period of at least ten days from the date the policy or certificate is delivered to the policyowner
66 or certificateholder the policy or certificate is surrendered to the insurer or its agent with a written
67 request for cancellation, the policy or certificate shall be void from the beginning and the insurer shall
68 refund any premium paid for the policy or certificate; and

69 8. Each individual policy or group certificate *paid in advance or by a single premium* shall include a
70 provision, separately and prominently captioned, stating in substance the following:

71 "REFUND OF PREMIUM IN THE EVENT OF EARLY TERMINATION"

72 "In the event this insurance policy or certificate is terminated prior to its originally scheduled
73 maturity date, or the insured indebtedness is terminated or paid off earlier than scheduled, the insurer
74 shall, within 30 days of receipt of notification from the debtor of such termination or early payoff,
75 refund or credit any amount paid by the debtor for the insurance beyond the actual date of termination
76 or payoff. Early termination of debt includes termination by renewal or refinancing. The debtor's
77 notification to the insurer shall include proof of termination or early payoff of the insured indebtedness."

78 E. An individual credit life insurance or credit accident and sickness insurance policy or certificate of
79 insurance shall be delivered or mailed to the insured debtor at the time the indebtedness is incurred or
80 within ten business days thereafter except as provided in subsection F of this section. For open-end
81 credit transactions, agricultural or educational loan commitments, or where no direct charge is made to
82 the debtor for his insurance, the individual policy or group certificate of insurance may be delivered to
83 the insured debtor at the time he first becomes eligible for the insurance and need not be delivered again
84 each time new indebtedness is added.

85 F. If the individual policy or certificate of insurance is not delivered or mailed to the debtor at the
86 time indebtedness is incurred, or within ten business days thereafter, a notice of proposed insurance,
87 setting forth (i) the name and address of the insurer, (ii) the name or names of the debtor, (iii) the age
88 of the debtor, (iv) the premium or amount of payment by the debtor, if any, separately for credit life
89 insurance and credit accident and sickness insurance, and (v) the amount, term and a brief description of
90 the coverage provided, shall be delivered to the debtor. The notice of proposed insurance shall refer
91 exclusively to insurance coverage and shall be separate and apart from the loan or credit transaction.
92 Upon acceptance of the insurance by the insurer and within thirty days of the date upon which the
93 indebtedness is incurred, the insurer shall deliver or mail the individual policy or group certificate of
94 insurance to the debtor. The notice of proposed insurance shall state that upon acceptance by the insurer,
95 the insurance shall become effective as provided in § 38.2-3721.

96 G. If the policy or certificate is issued by any insurer other than the insurer listed on the application,
97 enrollment request, or notice of proposed insurance, the debtor shall receive a policy or certificate of
98 insurance setting forth the name and address of the substituted insurer and the amount of the premium
99 to be charged. If the amount of the premium is less than that set forth in the notice of proposed
100 insurance, an appropriate refund shall be made.

101 § 38.2-3735. Disclosure and readability.

102 A. If a creditor makes available to the debtors more than one plan of credit life insurance or more
103 than one plan of credit accident and sickness insurance, all debtors must be informed of all such plans
104 for which they are eligible. In the case of credit life insurance:

105 1. If a creditor offers a plan of insurance that insures the actual amount of unpaid indebtedness, the
106 creditor shall also offer to the debtor a plan of insurance that insures only the actual amount of
107 indebtedness less any unearned interest or finance charges; and

108 2. In the event that a plan of insurance that insures the actual amount of unpaid indebtedness is
109 offered, the creditor shall provide to each debtor a disclosure form which shall clearly disclose the
110 difference in premiums charged for a contract wherein the gross indebtedness is insured versus a
111 contract wherein only the net indebtedness is insured. This disclosure shall include the differences
112 between the amount financed, the monthly payment and the total charge for each type of insurance. The
113 form shall be signed and dated by the debtor and the agent, if any, soliciting the application or the
114 creditor's representative, if any, soliciting the enrollment request. A copy of this disclosure shall be
115 given to the debtor, and a copy shall be made a part of the creditor's loan file.

116 Nothing contained in this subsection shall be construed to prohibit the creditor from combining such
117 disclosure, in order to avoid redundancy, with other forms of disclosure required under state or federal
118 law.

119 B. When elective credit insurance is offered, the borrower must be given written disclosure that
120 purchase of credit insurance is not required and is not a factor in granting credit. The disclosure shall
121 also include notice that the borrower has the right to use alternative coverage or to buy insurance

elsewhere.

C. If the debtor is given a contract which includes a single premium payment to be charged for elective credit insurance, the debtor must be given:

1. A contract which does not include the elective credit insurance premium; or

2. A disclosure form which shall clearly disclose the difference in premiums charged for a contract with credit insurance and one without credit insurance. This disclosure shall include the difference between the amount financed, the monthly payment and the charge for each kind of insurance. The form shall be signed and dated by the debtor and the agent, if any, soliciting the application or the creditor's representative, if any, soliciting the enrollment request. A copy of this disclosure shall be given to the debtor and a copy shall be made a part of the creditor's loan file.

Nothing contained in this subsection shall be construed to prohibit the creditor from combining such disclosure, in order to avoid redundancy, with other forms of disclosure required under state or federal law.

D. If credit life insurance or credit accident and sickness insurance is required as security for any indebtedness, the debtor shall have the option of (i) furnishing the required amount of insurance through existing policies of insurance owned or controlled by him or (ii) procuring and furnishing the required coverage through any insurer authorized to transact insurance in this Commonwealth. The creditor shall inform the debtor of this option in writing and shall obtain the debtor's signature acknowledging that he understands this option. Nothing contained in this subsection shall be construed to prohibit the creditor from combining such disclosure, in order to avoid redundancy, with other forms of disclosure required under state or federal law.

E. No contract of insurance upon a debtor paid *in advance* or by a single premium shall be made or effectuated unless, at the time of the contract, the debtor is provided with a notice prominently disclosing his rights to a refund of premium in the event the insurance is terminated prior to its scheduled maturity date or the insured indebtedness is terminated or paid off early, and of the obligation of the debtor to provide notification to the insurer under subdivision D 8 of § 38.2-3724. This notice shall be signed and dated by the debtor and the agent, if any, soliciting the application or the creditor's representative, if any, soliciting the enrollment request. A copy of the signed notice shall be given to the debtor and a copy shall be made part of the insurer's file.

F. Readability. - The Commission shall not approve any form unless the policy or certificate is written in nontechnical, readily understandable language, using words of common everyday usage.

A form shall be deemed acceptable under this section if the insurer certifies that the form achieves a Flesch Readability Score of forty or more, using the Flesch Readability Formula as set forth in Rudolf Flesch, *The Art of Readable Writing* (1949, as revised 1974), and certifies compliance with the guidelines set forth in this section.