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SENATE BILL NO. 399

Offered January 13, 2010

Prefiled January 13, 2010

A BILL to amend and reenact §§ 38.2-2212, 38.2-2213, and 38.2-2234 of the Code of Virginia, relating to motor vehicle insurance premiums; use of certain credit information.

Patron—Wagner

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 38.2-2212, 38.2-2213, and 38.2-2234 of the Code of Virginia are amended and reenacted as follows:

§ 38.2-2212. Grounds and procedure for cancellation of or refusal to renew motor vehicle insurance policies; review by Commissioner.

A. The following definitions shall apply to this section:

"Cancellation" or "to cancel" means a termination of a policy during the policy period.

"Insurer" means any insurance company, association, or exchange licensed to transact motor vehicle insurance in this Commonwealth.

"Policy of motor vehicle insurance" or "policy" means a policy or contract for bodily injury or property damage liability insurance issued or delivered in this Commonwealth covering liability arising from the ownership, maintenance, or use of any motor vehicle, insuring as the named insured one individual or husband and wife who are residents of the same household, and under which the insured vehicle designated in the policy is either:

a. A motor vehicle of a private passenger, station wagon, or motorcycle type that is not used commercially, rented to others, or used as a public or livery conveyance where the term "public or livery conveyance" does not include car pools, or

b. Any other four-wheel motor vehicle which is not used in the occupation, profession, or business, other than farming, of the insured, or as a public or livery conveyance, or rented to others. The term "policy of motor vehicle insurance" or "policy" does not include (i) any policy issued through the Virginia Automobile Insurance Plan, (ii) any policy covering the operation of a garage, sales agency, repair shop, service station, or public parking place, (iii) any policy providing insurance only on an excess basis, or (iv) any other contract providing insurance to the named insured even though the contract may incidentally provide insurance on motor vehicles.

"Renewal" or "to renew" means (i) the issuance and delivery by an insurer of a policy superseding at the end of the policy period a policy previously issued and delivered by the same insurer, providing types and limits of coverage at least equal to those contained in the policy being superseded, or (ii) the issuance and delivery of a certificate or notice extending the term of a policy beyond its policy period or term with types and limits of coverage at least equal to those contained in the policy. Each renewal shall conform with the requirements of the manual rules and rating program currently filed by the insurer with the Commission. Except as provided in subsection K of this section, any policy with a policy period or term of less than 12 months or any policy with no fixed expiration date shall for the purpose of this section be considered as if written for successive policy periods or terms of six months from the original effective date.

B. This 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;

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

83 2. Nothing in this section shall require any insurer to renew a policy for an insured where the
84 insured's occupation has changed so as to materially increase the risk. Nothing contained in subdivisions
85 C 1 n, 1 o and 1 p of this subsection shall prohibit an insurer from refusing to renew a policy where a
86 claim is false or fraudulent. Nothing in this section prohibits any insurer from setting rates in accordance
87 with relevant actuarial data, *except that insurers shall not set rates or make pricing decisions based on a*
88 *person's credit history, lack of credit history, or credit score.*

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

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

117 The notice of cancellation or refusal to renew shall contain the following statement to inform the
118 insured of such right:
119 **IMPORTANT NOTICE**
120 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

182 motor vehicle liability insurance to one class or group of persons engaged in any one particular
183 profession, trade, occupation, or business. Nothing in this section requires an insurer to renew a policy
184 of motor vehicle insurance if the insured does not conform to the occupational or membership
185 requirements of an insurer who limits its writings to an occupation or membership of an organization.
186 No insurer is required to renew a policy if the insured becomes a nonresident of Virginia.

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

194 § 38.2-2213. Discrimination in issuance of motor vehicle insurance.

195 No insurer or agent shall refuse to issue a motor vehicle insurance policy as defined in § 38.2-2212
196 solely because of any one or more of the following factors: the age, sex, residence, race, color, creed,
197 national origin, ancestry, marital status, or lawful occupation, including the military service, of the
198 person seeking the coverage. Nothing in this section prohibits any insurer from limiting the issuance of
199 motor vehicle insurance policies to those who are residents of this Commonwealth nor does this section
200 prohibit any insurer from limiting the issuance of motor vehicle insurance policies only to persons
201 engaging in or who have engaged in a particular profession or occupation, or who are members of a
202 particular religious sect. Nothing in this section prohibits any insurer from setting rates in accordance
203 with relevant actuarial data, *except that insurers shall not set rates or make pricing decisions based on a*
204 *person's credit history, lack of credit history, or credit score.*

205 § 38.2-2234. Insurance credit score disclosure; use of credit information.

206 A. Any insurer issuing or delivering a policy of motor vehicle insurance in this Commonwealth, as
207 defined in § 38.2-2212, ~~that uses~~ *shall not use* credit information contained in a consumer report for
208 underwriting, tier placement or rating an applicant or insured ~~shall meet the following requirements:~~

209 1. Disclose, either on the insurance application or at the time the insurance application is taken (i)
210 that it shall obtain credit information in connection with such application; (ii) that the insured may
211 request that his credit information be updated; and (iii) that, if the insured questions the accuracy of the
212 credit information, the insurer will, upon request of the insured, reevaluate the insured based on
213 corrected credit information from a consumer reporting agency. The disclosure may be made by the
214 insurer or its agent. Such disclosure shall be either written or provided to an applicant in the same
215 medium as the application for insurance. The insurer need not provide the disclosure required under this
216 subsection to any insured on a renewal policy, if such insured has previously been provided a disclosure.
217 Use of the following example disclosure constitutes compliance with this subsection: "In connection with
218 this application for insurance, we shall review your credit report or obtain or use an insurance credit
219 score based on the information contained in that credit report. We may use a third party in connection
220 with the development of your insurance credit score. You may request that your credit information be
221 updated and if you question the accuracy of the credit information, we will, upon your request,
222 reevaluate you based on corrected credit information from a consumer reporting agency."

223 2. If an insurer takes an adverse action, based in whole or in part, upon credit information, the
224 insurer must provide notification to the applicant or insured that the adverse action was based, in whole
225 or in part, on credit information. Such notification shall also either include a statement advising the
226 applicant or insured of the primary factors or characteristics that were used as the basis for the adverse
227 action, or notify the applicant or insured that he may request such information. For the purposes of this
228 section, adverse action means a denial, nonrenewal or cancellation of, an increase in any charge for or
229 refusal to apply a discount, or placement in a less favorable tier, or a reduction or other adverse or
230 unfavorable change in the terms of coverage or amount of, any insurance, existing or applied for, in
231 connection with underwriting, tier placement or rating. Adverse action includes, but is not limited to,
232 circumstances where the applicant or insured (i) did not receive the company's most favorable rate; (ii)
233 was not placed in the company's best tier, and (iii) when there are multiple companies available within a
234 group of insurers, the applicant or insured did not receive coverage in the group's most favorably priced
235 company. In the case of renewals, the circumstances listed in clauses (i), (ii), and (iii) shall not be
236 deemed adverse actions if, due to the insured's credit information, the insured is not receiving a less
237 favorable rate or placed in a less favorable tier or company than during the policy period immediately
238 preceding renewal.

239 B. If an insurer uses credit information from a consumer report for tier placement or rating of its
240 renewal business for a policy of motor vehicle insurance, as defined in § 38.2-2212, issued or delivered
241 in this Commonwealth the insurer shall be required to update the credit information at least once every
242 three years, provided, however, that the insurer shall be required to update an insured's credit
243 information within the three-year period if requested by the insured. If an update request is made by the

insured at least 45 days prior to the end of the policy term; any adjustment to the premium required by the update of the insured's credit information shall take effect at the first renewal following the request for update of the insured's credit information. If an update request is made by the insured within 45 days of the end of the policy term, the insurer shall have the option of applying any adjustment to the premium required by the update of the insured's credit information to the first renewal or the second renewal following the request for update of the insured's credit information. An insurer need not update the credit information more frequently than once every policy term. Notwithstanding the requirements of this subsection, no insurer need obtain updated credit information if the insured has the most favorably priced tier or rate based on his credit information.

C. Notwithstanding the provisions of subdivision A 3 of § 38.2-1904, if an insurer issuing or delivering a policy of motor vehicle insurance, as defined in § 38.2-2212, in this Commonwealth is unable to obtain credit information from a consumer report or when an insured or applicant has insufficient credit to produce an insurance credit score, the insurer shall underwrite, tier, or rate the individual risk in one of the following ways: (i) as if the risk received a neutral or average insurance credit score, as defined by the insurer; (ii) by excluding the use of credit information as a factor and using only other underwriting, tiering, or rating criteria; or (iii) in accordance with established underwriting guidelines or filed tiering or rating rules. Any such established underwriting guidelines or filed tiering or rating rules shall consider other actuarially justified factors associated with the risk in addition to the inability to obtain credit information or the insufficiency of the credit information.

D. The following factors shall not be used as credit criteria or to determine an insurance credit score for underwriting, tier placement, or rating purposes for a policy of motor vehicle insurance, as defined in § 38.2-2212, issued or delivered in this Commonwealth:

1. Information that has been identified by the consumer reporting agency as disputed by the consumer and coded as such; if the use of such disputed information would result in an adverse action;

2. Information that has been identified by the consumer reporting agency as related to insurance inquiries or nonconsumer-initiated inquiries and coded as such;

3. Information that has been identified by the consumer reporting agency as related to collection accounts with a medical industry code;

4. Information that includes multiple lender inquiries, if coded by the consumer reporting agency as being from the home mortgage industry and made within 30 days of one another, unless only one inquiry is considered;

5. Information that includes multiple lender inquiries, if coded by the consumer reporting agency as being from the automobile lending industry and made within 30 days of one another, unless only one inquiry is considered;

6. Income, gender, address, zip code, ethnic group, race, color, religion, marital status, or nationality of the consumer; or

7. The total available line of credit; however, an insurer may consider the total amount of outstanding debt in relation to the total available line of credit.

EB. No insurer shall take an adverse action against an applicant for *base the premium charged for a* policy of motor vehicle insurance, as defined in § 38.2-2212, issued or delivered in this Commonwealth, based on credit information, unless an insurer obtains and uses a consumer report procured within 90 days from the date the policy is first written.

F. Notwithstanding anything to the contrary, for a policy of motor vehicle insurance, as defined in § 38.2-2212, issued or delivered in this Commonwealth, an insurer may, upon request, provide reasonable exceptions for an individual whose credit information is directly and adversely impacted by a catastrophic event, as determined by the insurer, including, but not limited to, catastrophic illness or injury or the death of a spouse or member of the same household. The insurer may require reasonable documentation of the event prior to granting an exception. No insurer shall be deemed out of compliance with its filed rules and rates as a result of granting an exception pursuant to this subsection.

G. Upon the request of an insured or applicant with respect to a policy of motor vehicle insurance, as defined in § 38.2-2212, issued or delivered in this Commonwealth, for a reevaluation as set forth in this section, the insurer shall reevaluate the individual based on corrected credit information from a consumer reporting agency. If the reevaluation results in a lower premium, the lower premium shall be applied retroactively to the effective date of the current policy term, and the insurer shall either refund or credit the amount to the insured. The insurer may require reasonable documentation of the corrected information from the consumer reporting agency prior to the reevaluation.

H. An insurer shall indemnify, defend, and hold agents harmless from and against all liability, fees, and costs arising out of or relating to the actions, errors, or omissions of an agent who obtains or uses credit information or insurance credit scores for an insurer, provided the agent follows the instructions or procedures established by the insurer and complies with any applicable law. Nothing in this subsection shall be construed to provide an applicant or insured with a cause of action that does not exist in the

305 absence of this subsection.

306 I. No consumer reporting agency shall provide or sell data or lists that include any information that
307 in whole or in part was submitted in conjunction with an insurance inquiry about an individual's credit
308 information or a request for a consumer report or an insurance credit score. Such information includes,
309 but is not limited to, the expiration dates of an insurance policy or any other information that may
310 identify time periods during which an individual's insurance may expire and the terms and conditions of
311 the individual's insurance coverage. The restrictions provided in this subsection do not apply to data or
312 lists the consumer reporting agency supplies to the insurance agent from whom information was received
313 or the insurer on whose behalf such agent acted. Nothing in this subsection shall be construed to restrict
314 any insurer from being able to obtain a claims history report or a motor vehicle report.

315 J. For the purposes of this section, "insurance credit score" means a number or rating that is derived
316 from an algorithm, computer application, model, or other process that is based in whole or in part on
317 credit information for the purposes of predicting the future insurance loss exposure of an individual
318 applicant or insured for or under a policy of motor vehicle insurance, as defined in § 38.2-2212, issued
319 or delivered in this Commonwealth.

320 KC. The provisions set forth in this section shall apply to new policies of motor vehicle insurance, as
321 defined in § 38.2-2212, issued or delivered in this Commonwealth, not later than January 1, 2004 2011,
322 and to renewal policies of motor vehicle insurance, as defined in § 38.2-2212, issued or delivered in this
323 Commonwealth, not later than April 1, 2004 2011.

324 LD. The provisions of this section shall apply only to insurance purchased primarily for personal,
325 family, or household purposes.