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## HOUSE BILL NO. 1528

AMENDMENT IN THE NATURE OF A SUBSTITUTE  
(Proposed by the House Committee on Commerce and Labor  
on January 15, 2013)

(Patron Prior to Substitute—Delegate Rust)

A BILL to amend and reenact § 38.2-231 of the Code of Virginia, relating to commercial insurance policies; notices to insureds.

Be it enacted by the General Assembly of Virginia:

1. That § 38.2-231 of the Code of Virginia is amended and reenacted 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 *first* 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 *first* 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 *first named* 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 *first named* 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 *first* named insured at the address shown on the policy, or delivers electronically to the address provided by the *first* 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:

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

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

64 3. Advise the *first* named insured of the specific reason for the increase and the amount of the  
65 increase, or, if in the case of a reduction in coverage, the specific reason for the reduction and the  
66 manner in which coverage will be reduced, or that such information may be obtained from the agent or  
67 the insurer;

68 4. Advise the *first named* insured of its right to request in writing, within 15 days of receipt of the  
69 notice, that the Commissioner of Insurance review the action of the insurer.

70 D. If an insurer does not provide notice in the manner required in subsection C, coverage shall  
71 remain in effect until 45 days after written notice of reduction in coverage or increase in premium is  
72 mailed or delivered to the *first named* insured at the address shown on the policy, or delivered  
73 electronically to the address provided by the *first* named insured, unless the *named* insured obtains  
74 replacement coverage or elects to cancel sooner in either of which cases coverage under the prior policy  
75 shall cease on the effective date of the replacement coverage or the elected date of cancellation as the  
76 case may be. If the *named* insured fails to accept or rejects the changed policy, coverage for any period  
77 that extends beyond the expiration date will be under the prior policy's rates, terms and conditions as  
78 applied against the renewal policy's limits, rating exposures, and additional coverages. If the *named*  
79 insured accepts the changed policy, the reduction in coverage or increase in premium shall take effect  
80 upon the expiration of the prior policy.

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

82 1. The insurer, after written demand, has not received, within 45 days after such demand has been  
83 mailed or delivered to the *first named* insured at the address shown on the policy, or delivered  
84 electronically to the address provided by the *first* named insured, sufficient information from the *named*  
85 insured to provide the required notice;

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

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

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

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

94 F. No written notice of cancellation, refusal to renew, reduction in coverage or increase in premium  
95 that is mailed, or delivered electronically when authorized for a notice other than a notice of  
96 cancellation, by an insurer to ~~an~~ a *first named* insured in accordance with this section shall be effective  
97 unless:

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

99 b. At the time of mailing the insurer obtains a written receipt from the United States Postal Service  
100 showing the name and address of the *first named* insured stated in the policy,

101 c. At the time of mailing the insurer (i) obtains a written receipt from the United States Postal  
102 Service showing the date of mailing and the number of items mailed and (ii) retains a mailing list  
103 showing the name and address of the *first named* insured stated in the policy, or the last known address,  
104 to whom the notices were mailed, together with a signed statement by the insurer that the written receipt  
105 from the United States Postal Service corresponds to the mailing list retained by the insurer, or

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

108 2. The insurer retains a copy of the notice of cancellation, refusal to renew, reduction in coverage or  
109 increase in premium.

110 3. a. If the terms of a policy of motor vehicle insurance insuring a business entity require the notice  
111 of cancellation, refusal to renew, reduction in coverage or increase in premium to be given to any  
112 lienholder, then the insurer shall mail such notice and retain a copy of the notice in the manner required  
113 by this subsection. If the notices sent to the *first named* insured and the lienholder are part of the same  
114 form, the insurer may retain a single copy of the notice. The registered, certified or regular mail postal  
115 receipt and the copy of the notices required by this subsection shall be retained by the insurer for at  
116 least one year from the date of termination.

117 b. Notwithstanding the provisions of subdivision 3 a, if the terms of the policy require the notice of  
118 cancellation, refusal to renew, reduction in coverage or increase in premium to be given to any  
119 lienholder, the insurer and lienholder may agree by separate agreement that such notices may be  
120 transmitted electronically provided that the insurer and lienholder agree upon the specifics for transmittal  
121 and acknowledgement of notification. Evidence of transmittal or receipt of the notification required by

122 this subsection shall be retained by the insurer for at least one year from the date of termination.

123 4. Copy, as used in this subsection, shall include photographs, microphotographs, photostats,  
124 microfilm, microcard, printouts or other reproductions of electronically stored data, or copies from  
125 optical disks, electronically transmitted facsimiles, or any other reproduction of an original from a  
126 process which forms a durable medium for its recording, storing, and reproducing.

127 G. Nothing in this section shall prohibit any insurer or agent from including in a notice of  
128 cancellation, refusal to renew, reduction in coverage or premium increase any additional disclosure  
129 statements required by state or federal laws.

130 H. For the purpose of this section the terms (i) "business entity" shall mean an entity as defined by  
131 subsection A of § 13.1-543, § 13.1-603 or 13.1-803 and shall include an individual, a partnership, an  
132 unincorporated association, the Commonwealth, a county, city, town, or an authority, board, commission,  
133 sanitation, soil and water, planning or other district, public service corporation owned, operated or  
134 controlled by the Commonwealth, a locality or other local governmental authority; (ii) "policy of motor  
135 vehicle insurance" shall mean a policy or contract for bodily injury or property damage liability insuring  
136 a business entity issued or delivered in this Commonwealth covering liability arising from the  
137 ownership, maintenance, or use of any motor vehicle, but does not include (a) any policy issued through  
138 the Virginia Automobile Insurance Plan, (b) any policy providing insurance only on an excess basis, or  
139 (c) any other contract providing insurance to the named insured even though the contract may  
140 incidentally provide insurance on motor vehicles; and (iii) "reduction in coverage" shall mean, but not  
141 be limited to, any diminution in scope of coverage, decrease in limits of liability, addition of exclusions,  
142 increase in deductibles, or reduction in the policy term or duration except a reduction in coverage filed  
143 with and approved by the Commission and applicable to an entire line, classification or subclassification  
144 of insurance.

145 I. Within 15 days of receipt of the notice of cancellation, refusal to renew, reduction in coverage or  
146 increase in premium, the *named* insured shall be entitled to request in writing to the Commissioner that  
147 he review the action of the insurer. Upon receipt of the request, the Commissioner shall promptly begin  
148 a review to determine whether the insurer's notice of cancellation, refusal to renew, reduction in  
149 coverage or premium increase complies with the requirements of this section. Where the Commissioner  
150 finds from the review that the notice of cancellation, refusal to renew, reduction in coverage or premium  
151 increase does not comply with the requirements of this section, he shall immediately notify the insurer,  
152 the *named* insured and any other person to whom such notice was required to be given by the terms of  
153 the policy that such notice is not effective. Nothing in this section authorizes the Commissioner to  
154 substitute his judgment as to underwriting for that of the insurer. Pending review by the Commission,  
155 this section shall not operate to relieve an insured from the obligation to pay any premium when due;  
156 however, if the Commission finds that the notice required by this section was not proper, the  
157 Commission may order the insurer to pay to the insured any overpayment of premium made by the  
158 insured.

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

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

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

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