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HOUSE BILL NO. 211

Offered January 8, 2014

Prefiled December 27, 2013

A BILL to amend and reenact § 38.2-2204 of the Code of Virginia, relating to motor vehicle insurance policies; coverage for inconvenience.

Patron—Marshall, D.W.

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 38.2-2204 of the Code of Virginia is amended and reenacted as follows:

§ 38.2-2204. Liability insurance on motor vehicles, aircraft, and watercraft; standard provisions; "omnibus clause".

A. No policy or contract of bodily injury or property damage liability insurance, covering liability arising from the ownership, maintenance, or use of any motor vehicle, aircraft, or private pleasure watercraft, shall be issued or delivered in this Commonwealth to the owner of such vehicle, aircraft or watercraft, or shall be issued or delivered by any insurer licensed in this Commonwealth upon any motor vehicle, aircraft, or private pleasure watercraft that is principally garaged, docked, or used in this Commonwealth, unless the policy contains a provision insuring the named insured, and any other person using or responsible for the use of the motor vehicle, aircraft, or private pleasure watercraft with the expressed or implied consent of the named insured, against liability for death or injury sustained, or loss or damage incurred within the coverage of the policy or contract as a result of negligence in the operation or use of such vehicle, aircraft, or watercraft by the named insured or by any such person; however, nothing contained in this section shall be deemed to prohibit an insurer from limiting its liability under any one policy for bodily injury or property damage resulting from any one accident or occurrence to the liability limits for such coverage set forth in the policy for any such accident or occurrence or for any one person, regardless of the number of insureds under that policy. Provided that, when one accident or occurrence involves more than one defendant who is covered by the policy, the plaintiff may recover the per person limit of the policy against each such defendant, subject to the per accident or occurrence limit of the policy. Each such policy or contract of liability insurance, or endorsement to the policy or contract, insuring private passenger automobiles, aircraft, or private pleasure watercraft principally garaged, docked, or used in this Commonwealth, that has as the named insured an individual or husband and wife and that includes, with respect to any liability insurance provided by the policy, contract or endorsement for use of a nonowned automobile, aircraft or private pleasure watercraft, any provision requiring permission or consent of the owner of such automobile, aircraft, or private pleasure watercraft for the insurance to apply, shall be construed to include permission or consent of the custodian in the provision requiring permission or consent of the owner.

B. Notwithstanding any requirements in this section to the contrary, an insurer may exclude any person from coverage under a personal umbrella or excess policy, if the exclusion is requested in writing by the first named insured and is acknowledged in writing by the excluded driver.

C. For aircraft liability insurance, such policy or contract may contain the exclusions listed in § 38.2-2227. Notwithstanding the provisions of this section or any other provisions of law, no policy or contract shall require pilot experience greater than that prescribed by the Federal Aviation Administration, except for pilots operating air taxis, or pilots operating aircraft applying chemicals, seed, or fertilizer.

D. No policy or contract of bodily injury or property damage liability insurance relating to the ownership, maintenance, or use of a motor vehicle shall be issued or delivered in this Commonwealth to the owner of such vehicle or shall be issued or delivered by an insurer licensed in this Commonwealth upon any motor vehicle principally garaged or used in this Commonwealth without an endorsement or provision insuring the named insured, and any other person using or responsible for the use of the motor vehicle with the expressed or implied consent of the named insured, against liability for death or injury sustained, or loss or damage incurred within the coverage of the policy or contract as a result of negligence in the operation or use of the motor vehicle by the named insured or by any other such person; however, nothing contained in this section shall be deemed to prohibit an insurer from limiting its liability under any one policy for bodily injury or property damage resulting from any one accident or occurrence to the liability limits for such coverage set forth in the policy for any such accident or occurrence or for any one person regardless of the number of insureds under that policy. Provided that, when one accident or occurrence involves more than one defendant who is covered by the policy, the

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59 plaintiff may recover the per person limit of the policy against each such defendant, subject to the per
60 accident or occurrence limit of the policy. This provision shall apply notwithstanding the failure or
61 refusal of the named insured or such other person to cooperate with the insurer under the terms of the
62 policy. If the failure or refusal to cooperate prejudices the insurer in the defense of an action for
63 damages arising from the operation or use of such insured motor vehicle, then the endorsement or
64 provision shall be void. If an insurer has actual notice of a motion for judgment or complaint having
65 been served on an insured, the mere failure of the insured to turn the motion or complaint over to the
66 insurer shall not be a defense to the insurer, nor void the endorsement or provision, nor in any way
67 relieve the insurer of its obligations to the insured, provided the insured otherwise cooperates and in no
68 way prejudices the insurer.

69 Where the insurer has elected to provide a defense to its insured under such circumstances and files
70 responsive pleadings in the name of its insured, the insured shall not be subject to sanctions for failure
71 to comply with discovery pursuant to Part Four of the Rules of the Supreme Court of Virginia unless it
72 can be shown that the suit papers actually reached the insured, and that the insurer has failed after
73 exercising due diligence to locate its insured, and as long as the insurer provides such information in
74 response to discovery as it can without the assistance of the insured.

75 E. Any endorsement, provision or rider attached to or included in any such policy of insurance which
76 purports or seeks to limit or reduce the coverage afforded by the provisions required by this section
77 shall be void, except an insurer may exclude such coverage as is afforded by this section, where such
78 coverage would inure to the benefit of the United States Government or any agency or subdivision
79 thereof under the provisions of the Federal Tort Claims Act, the Federal Drivers Act and Public Law
80 86-654 District of Columbia Employee Non-Liability Act, or to the benefit of the Commonwealth under
81 the provisions of the Virginia Tort Claims Act (§ 8.01-195.1 et seq.) and the self-insurance plan
82 established by the Department of General Services pursuant to § 2.2-1837 for any state employee who,
83 in the regular course of his employment, transports patients in his own personal vehicle.

84 *F. No policy or contract of bodily injury or property damage liability insurance covering liability*
85 *arising from the ownership, maintenance, or use of any motor vehicle shall be issued or delivered in the*
86 *Commonwealth to the owner of the motor vehicle or shall be issued or delivered by any insurer licensed*
87 *in the Commonwealth upon any motor vehicle that is principally garaged, docked, or used in the*
88 *Commonwealth unless the policy contains a provision insuring the named insured, and any other person*
89 *using or responsible for the use of the motor vehicle with the expressed or implied consent of the named*
90 *insured, against liability for inconvenience incurred by a third party as a result of negligence in the*
91 *operation or use of the motor vehicle by the named insured or by any such person, with limits of not*
92 *less than \$10,000. As used in this subsection:*

93 *"Inconvenience" means any reasonable pecuniary expense, including the costs of renting a car or*
94 *obtaining alternate means of transportation and of lost wages resulting from work missed while*
95 *arranging for repair of the third person's motor vehicle, that is incurred during the period the third*
96 *person's motor vehicle is inoperable, by a third party in the course of dealing with disruptions in the*
97 *normal routine of the third party's life activities as a result of a collision (i) involving the insured motor*
98 *vehicle and a motor vehicle owned by the third party, (ii) resulting from negligence in the operation or*
99 *use of the insured motor vehicle by the named insured or by any other person using or responsible for*
100 *the use of the insured motor vehicle with the expressed or implied consent of the named insured, and*
101 *(iii) that renders the third party's motor vehicle inoperable.*

102 *"Third party" means a person other than the named insured or any other person using or*
103 *responsible for the use of the motor vehicle with the expressed or implied consent of the named insured.*