

VIRGINIA ACTS OF ASSEMBLY -- 2019 SESSION

CHAPTER 704

An Act to amend and reenact §§ 38.2-2126 and 38.2-2234 of the Code of Virginia, relating to property and motor vehicle insurance; use of credit scores; adverse actions.

[H 2230]

Approved March 21, 2019

Be it enacted by the General Assembly of Virginia:

1. That §§ 38.2-2126 and 38.2-2234 of the Code of Virginia are amended and reenacted as follows:

§ 38.2-2126. Insurance credit score disclosure; use of credit information.

A. Any insurer issuing or delivering a policy written to insure an owner-occupied dwelling or the personal property of a tenant's residential property risk that uses credit information contained in a consumer report for underwriting, tier placement or rating an applicant or insured, shall meet the following requirements:

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

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

B. If an insurer uses credit information from a consumer report for tier placement or rating of its renewal business for a policy insuring an owner-occupied dwelling or the personal property of a tenant's residential property risk, the insurer shall be required to update the credit information at least once every three years, provided, however, that the insurer shall be required to update an insured's credit 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 to insure an owner-occupied dwelling or the personal property of a tenant's residential property risk 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 insuring an owner-occupied dwelling or the personal property of a tenant's residential property risk:

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.

E. No insurer shall take an adverse action against an applicant for a policy insuring an owner-occupied dwelling or the personal property of a tenant's residential property risk 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 insuring an owner-occupied dwelling or the personal property of a tenant's residential property risk, 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 a policy insuring an owner-occupied dwelling or the personal property of a tenant's residential property risk 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 absence of this subsection.

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

J. For the purposes of this section, "insurance credit score" means a number or rating that is derived from an algorithm, computer application, model, or other process that is based in whole or in part on credit information for the purposes of predicting the future insurance loss exposure of an individual applicant or insured for a policy insuring an owner-occupied dwelling or the personal property of a tenant's residential property risk.

~~K. The provisions set forth in this section shall apply to new policies insuring an owner-occupied dwelling or the personal property of a tenant's residential property risk not later than January 1, 2004, and to renewal policies insuring an owner-occupied dwelling or the personal property of a tenant's residential property risk not later than April 1, 2004.~~

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

A. Any insurer issuing or delivering a policy of motor vehicle insurance in this Commonwealth, as defined in § 38.2-2212, that uses credit information contained in a consumer report for underwriting, tier placement or rating an applicant or insured shall meet the following requirements:

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

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

B. If an insurer uses credit information from a consumer report for tier placement or rating of its renewal business for a policy of motor vehicle insurance, as defined in § 38.2-2212, issued or delivered in this Commonwealth the insurer shall be required to update the credit information at least once every three years, provided, however, that the insurer shall be required to update an insured's credit 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.

E. No insurer shall take an adverse action against an applicant 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 absence of this subsection.

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

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

K. The provisions set forth in this section shall apply to new policies of motor vehicle insurance, as

defined in § ~~38.2-2212~~, issued or delivered in this Commonwealth, not later than January 1, 2004, and to renewal policies of motor vehicle insurance, as defined in § ~~38.2-2212~~, issued or delivered in this Commonwealth, not later than April 1, 2004.

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