

# VIRGINIA ACTS OF ASSEMBLY -- 1995 SESSION

## CHAPTER 3

*An Act to amend and reenact §§ 38.2-2114 and 38.2-2212 of the Code of Virginia, relating to insurance; nonrenewal of coverage; credit reports.*

[H 220]

Approved January 27, 1995

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 38.2-2114 and 38.2-2212 of the Code of Virginia are amended and reenacted as follows:**

§ 38.2-2114. Grounds and procedure for termination of policy; contents of notice; review by Commissioner; exceptions; immunity from liability.

A. Notwithstanding the provisions of § 38.2-2105, no policy or contract written to insure owner-occupied dwellings shall be cancelled by an insurer unless written notice is mailed or delivered to the named insured at the address stated in the policy, and cancellation is for one of the following reasons:

1. Failure to pay the premium when due;
2. Conviction of a crime arising out of acts increasing the probability that a peril insured against will occur;
3. Discovery of fraud or material misrepresentation;
4. Willful or reckless acts or omissions increasing the probability that a peril insured against will occur as determined from a physical inspection of the insured premises; or
5. Physical changes in the property which result in the property becoming uninsurable as determined from a physical inspection of the insured premises.

B. No policy or contract written to insure owner-occupied dwellings shall be terminated by an insurer by refusal to renew except at the expiration of the stated policy period or term and unless the insurer or its agent acting on behalf of the insurer mails or delivers to the named insured, at the address stated in the policy, written notice of the insurer's refusal to renew the policy or contract.

C. A written notice of cancellation of or refusal to renew a policy or contract written to insure owner-occupied dwellings shall:

1. State the date that the insurer proposes to terminate the policy or contract, which shall be at least thirty days after mailing or delivering to the named insured the notice of cancellation or refusal to renew. However, when the policy is being terminated for the reason set forth in subdivision 1 of subsection A of this section, the date that the insurer proposes to terminate the policy may be less than thirty days but at least ten days from the date of mailing or delivery;

2. State the specific reason for terminating the policy or contract and provide for the notification required by the provisions of §§ 38.2-608 and 38.2-609 and subsection B of § 38.2-610. However, those notification requirements shall not apply when the policy is being cancelled or not renewed for the reason set forth in subdivision 1 of subsection A of this section;

3. Advise the insured that within ten days of receipt of the notice of termination he may request in writing that the Commissioner review the action of the insurer in terminating the policy or contract;

4. Advise the insured of his possible eligibility for fire insurance coverage through the Virginia Property Insurance Association; and

5. Be in a type size authorized by § 38.2-311.

D. Within ten days of receipt of the notice of termination any insured or his attorney shall be entitled to request in writing to the Commissioner that he review the action of the insurer in terminating a policy or contract written to insure owner-occupied dwellings. Upon receipt of the request, the Commissioner shall promptly initiate a review to determine whether the insurer's cancellation or refusal to renew complies with the requirements of this section and of § 38.2-2113, if sent by mail. 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 reason of nonpayment of premium, in which case the policy shall terminate as of the 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 § 38.2-2113, if sent by mail, he shall immediately notify the insurer, the insured, and any other person to whom notice of cancellation or refusal to renew 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.

E. Nothing in this section shall apply:

1. To any policy written to insure owner-occupied dwellings that has been in effect for less than ninety days when the notice of termination is mailed or delivered to the insured, unless it is a renewal policy;

2. 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 otherwise 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;

3. If the named insured has notified the insurer or its agent in writing that he wishes the policy to be cancelled, 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; or

4. To any contract or policy written through the Virginia Property Insurance Association or any residual market facility established pursuant to Chapter 27 of this title.

F. 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.

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 representative, its agents, its employees; or any firm, person or corporation 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.

H. Nothing in this section requires an insurer to renew a policy written to insure owner-occupied dwellings, if the insured does not conform to the occupational or membership requirements of an insurer who limits its writings to an occupation or membership of an organization.

I. No insurer or agent shall refuse to renew a policy written to insure an owner-occupied dwelling, solely because of ~~the age, sex, residence, race, color, creed, national origin, ancestry, marital status or lawful occupation, including the military service, of anyone who is insured.~~ *any one or more of the following factors:*

1. Age;
2. Sex;
3. Residence;
4. Race;
5. Color;
6. Creed;
7. National origin;
8. Ancestry;
9. Marital status;

10. *Lawful occupation, including the military service; however, nothing in this subsection shall require any insurer to renew a policy for an insured where the insured's occupation has changed so as to increase materially the risk;*

11. *Credit information contained in a "consumer report," as defined in the federal Fair Credit Reporting Act, 15 U.S.C. § 1681 et seq., bearing on a natural person's creditworthiness, credit standing or credit capacity, unless, in addition to any other requirements that may apply, the insurer includes in the notice required by this section the following statement or a statement substantially similar to it: "This nonrenewal is based on information contained in a consumer report relating to you and/or someone else who resides in your household." The notice shall also contain: (i) the name and address of an institutional source from whom the insurer obtained the credit information and (ii) a statement advising the insured that, if the insured wishes to inquire further about the credit information on which the nonrenewal is based and obtain a free copy of the "consumer report," the insured may do so by mailing a written request to the insurer, or such other party as the insurer shall identify in the notice, no more than ten days after the date on which the notice of nonrenewal was mailed to the insured. If the insured submits such written notification, the nonrenewal shall not become effective until thirty days after the accuracy of the credit information, which the insured has questioned and on which the nonrenewal was based, has been verified and communicated to the insured. Such verification shall be deemed to have been made upon completion of the investigation of the credit information which the insured has questioned and on which the nonrenewal was based. The insured must cooperate in the investigation of the credit information, including responding to any communication submitted by, or on behalf of, the insurer no more than ten days after the date on which such communication was mailed to the insured. If the insured fails to cooperate in the investigation of the credit information, the insurer may, after providing fifteen days' written notice to the insured, terminate such investigation and nonrenew the policy. An insurer may require that an insured submit written documentation authorizing the insurer, or such other party as the insurer shall identify, to perform the investigation of the credit information. The insured shall be obligated to pay any pro rata premium due for insurance provided during the period in which the investigation of the credit information is pending up to the date on which the policy nonrenewal becomes effective. Although the obligations imposed upon an insurer by this subdivision may be satisfied by a third party who agrees, and is authorized, to act on behalf of the insurer, the insurer shall remain responsible for compliance with the obligations imposed by this*

*subdivision; or*

*12. Any claim resulting primarily from natural causes.*

However, nothing in this subsection shall require any insurer to renew a policy for an insured where the insured's occupation has changed so as to materially increase the risk.

Nothing in this section prohibits any insurer from setting rates in accordance with relevant actuarial data.

J. No insurer shall cancel or refuse to renew a policy written to insure an owner-occupied dwelling because an insured under the policy is a foster parent and foster children reside at the insured dwelling.

§ 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 terms "public or livery conveyance" do 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 twelve 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;
- l. Lack of supporting business or lack of the potential for acquiring such business;
- m. One or more accidents or violations that occurred more than forty-eight months immediately preceding the upcoming anniversary date;
- n. One or more claims submitted under the uninsured motorists coverage of the policy where the uninsured motorist is known or there is physical evidence of contact;
  - o. A single claim by a single insured submitted under the medical payments coverage or medical expense coverage due to an accident for which the insured was neither wholly nor partially at fault;
  - p. One or more claims submitted under the comprehensive or towing coverages. However, nothing in this section shall prohibit an insurer from modifying or refusing to renew the comprehensive or towing coverages at the time of renewal of the policy on the basis of one or more claims submitted by an

insured under those coverages, provided that the insurer shall mail or deliver to the insured at the address shown in the policy written notice of any such change in coverage at least forty-five days prior to the renewal; or

q. Two or fewer motor vehicle accidents within a three-year period unless the accident was caused either wholly or partially by the named insured, a resident of the same household, or other customary operator ; or

r. *Credit information contained in a "consumer report," as defined in the federal Fair Credit Reporting Act, 15 U.S.C. § 1681 et seq., bearing on a natural person's creditworthiness, credit standing or credit capacity, unless, in addition to any other requirements that may apply, the insurer includes in the notice required by this section the following statement or a statement substantially similar to it: "This nonrenewal is based on information contained in a consumer report relating to you and/or someone else who resides in your household." The notice shall also contain: (i) the name and address of an institutional source from whom the insurer obtained the credit information and (ii) a statement advising the insured that, if the insured wishes to inquire further about the credit information on which the nonrenewal is based and obtain a free copy of the "consumer report," the insured may do so by mailing a written request to the insurer, or such other party as the insurer shall identify in the notice, no more than ten days after the date on which the notice of nonrenewal was mailed to the insured. If the insured submits such written notification, the nonrenewal shall not become effective until forty-five days after the accuracy of the credit information, which the insured has questioned and on which the nonrenewal was based, has been verified and communicated to the insured. Such verification shall be deemed to have been made upon completion of the investigation of the credit information which the insured has questioned and on which the nonrenewal was based. The insured must cooperate in the investigation of the credit information, including responding to any communication submitted by, or on behalf of, the insurer no more than ten days after the date on which such communication was mailed to the insured. If the insured fails to cooperate in the investigation of the credit information, the insurer may, after providing fifteen days' written notice to the insured, terminate such investigation and nonrenew the policy. An insurer may require that an insured submit written documentation authorizing the insurer, or such other party as the insurer shall identify, to perform the investigation of the credit information. The insured shall be obligated to pay any pro rata premium due for insurance provided during the period in which the investigation of the credit information is pending up to the date on which the policy nonrenewal becomes effective. Although the obligations imposed upon an insurer by this subdivision may be satisfied by a third party who agrees, and is authorized, to act on behalf of the insurer, the insurer shall remain responsible for compliance with the obligations imposed by this subdivision.*

2. Nothing in this section shall require any insurer to renew a policy for an insured where the insured's occupation has changed so as to materially increase the risk. Nothing contained in subdivisions C 1 n, 1 o and 1 p of this subsection shall prohibit an insurer from refusing to renew a policy where a claim is false or fraudulent. Nothing in this section prohibits any insurer from setting rates in accordance with relevant actuarial data.

D. No insurer shall cancel a policy except for one or more of the following reasons:

1. The named insured or any other operator who either resides in the same household or customarily operates a motor vehicle insured under the policy has had his driver's license suspended or revoked during the policy period or, if the policy is a renewal, during its policy period or the ninety days immediately preceding the last anniversary of the effective date.

2. The named insured fails to pay the premium for the policy or any installment of the premium, whether payable to the insurer or its agent either directly or indirectly under any premium finance plan or extension of credit.

E. No cancellation or refusal to renew by an insurer of a policy of motor vehicle insurance shall be effective unless the insurer delivers or mails to the named insured at the address shown in the policy a written notice of the cancellation or refusal to renew. The notice shall:

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

2. State the effective date of the cancellation or refusal to renew. The effective date of cancellation or refusal to renew shall be at least forty-five days after mailing or delivering to the insured the notice of cancellation or notice of refusal to renew. However, when the policy is being canceled or not renewed for the reason set forth in subdivision 2 of subsection D of this section the effective date may be less than forty-five days but at least fifteen days from the date of mailing or delivery.

3. State the specific reason of the insurer for cancellation or refusal to renew and provide for the notification required by §§ 38.2-608, 38.2-609, and subsection B of § 38.2-610. However, those notification requirements shall not apply when the policy is being canceled or not renewed for the reason set forth in subdivision 2 of subsection D of this section.

4. Inform the insured of his right to request in writing within fifteen days of the receipt of the notice that the Commissioner review the action of the insurer.

The notice of cancellation or refusal to renew shall contain the following statement to inform the insured of such right:

### IMPORTANT NOTICE

Within fifteen 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 cancelling 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, 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 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; or

3. To any motor vehicle insurance policy which has been in effect less than sixty days when the termination notice is mailed or delivered to the insured, unless it is 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 fifteen 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 cancelling 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. 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 motor vehicle liability insurance to one class or group of persons engaged in any one particular profession, trade, occupation, or business. Nothing in this section requires an insurer to renew a policy of motor vehicle insurance if the insured does not conform to the occupational or membership requirements of an insurer who limits its writings to an occupation or membership of an organization. No insurer is required to renew a policy if the insured becomes a nonresident of Virginia.

K. Notwithstanding any other provision of this section, a motor vehicle insurance policy with a policy period or term of five months or less may expire at its expiration date when the insurer has manifested in writing its willingness to renew the policy for at least thirty days and has mailed the written manifestation to the insured at least fifteen days before the expiration date of the policy. The written manifestation shall include the name of the proposed insurer, the expiration date of the policy,

the type of insurance coverage, and the estimated renewal premium. The insurer shall retain a copy of the written manifestation for at least one year from the expiration date of any policy that is not renewed.