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HOUSE BILL NO. 1901

Offered January 20, 1995

A BILL to amend and reenact §§ 38.2-233, 38.2-1814, 38.2-3727 and 38.2-3737 of the Code of Virginia, relating to credit insurance.

Patrons—Robinson, Bennett, Callahan, Copeland, Deeds, Jones, J.C., Keating, Parrish, Reynolds, Shuler and Tata; Senators: Hawkins, Holland, C.A., Nolen and Norment

Referred to Committee on Corporations, Insurance and Banking

Be it enacted by the General Assembly of Virginia:

1. That §§ 38.2-233, 38.2-1814, 38.2-3727 and 38.2-3737 of the Code of Virginia are amended and reenacted as follows:

§ 38.2-233. Credit involuntary unemployment insurance; disclosure and readability.

A. If a creditor makes available to the debtors more than one plan of credit involuntary unemployment insurance as defined in § 38.2-122.1, all debtors must be informed of all such plans for which they are eligible.

B. When elective credit involuntary unemployment insurance is offered, the borrower shall be given written disclosure that purchase of credit involuntary unemployment insurance is not required and is not a factor in granting credit. The disclosure shall also include notice that the borrower has the right to use alternative coverage or to buy insurance elsewhere.

C. If the debtor is given a contract which includes a single premium payment to be charged for elective credit involuntary unemployment insurance, the debtor shall be given:

1. A contract which does not include the elective credit involuntary unemployment insurance premium; or

2. A disclosure form which shall clearly disclose the difference in premiums charged for a contract with credit involuntary unemployment insurance and one without credit involuntary unemployment insurance. This disclosure shall include the difference between the amount financed, the monthly payment and the charge for insurance. The form shall be signed and dated by the debtor and the agent soliciting the application or the creditor's representative soliciting the enrollment request. A copy of this disclosure shall be given to the debtor and a copy shall be made a part of the creditor's loan file.

D. If credit involuntary unemployment insurance is required as security for any indebtedness, the debtor shall have the option of (i) furnishing the required amount of insurance through existing policies of insurance owned or controlled by him or (ii) procuring and furnishing the required coverage through any insurer authorized to transact insurance in this Commonwealth. The creditor shall inform the debtor of this option in writing and shall obtain the debtor's signature acknowledging that he understands this option.

E. The disclosure requirements set forth in subsections A, B, C and D shall be separately disclosed in another form or forms approved by the Commission. Notwithstanding the provisions of § 38.2-1921, when credit involuntary unemployment insurance is offered with credit life insurance or credit accident and sickness insurance, the disclosure requirements set forth in subsections A, B, C and D of § 38.2-233 and the disclosure requirements set forth in subsections A, B, C and D of § 38.2-3735 may be disclosed together in a form which shall be approved by the Commission.

F. ~~Readability.~~ The Commission shall not approve any form providing credit involuntary unemployment insurance unless the policy or certificate is written in nontechnical, readily understandable language, using words of common everyday usage:

1. Each insurer is required to test the readability of its policies or certificates by use of the Flesch Readability Formula, as set forth in Rudolf Flesch, *The Art of Readable Writing* (1949, as revised 1974);

2. A total readability score of forty or more on the Flesch score is required; and

3. All policies or certificates within the scope of this section shall be filed with the Commission, accompanied by a certificate setting forth the Flesch score and certifying compliance with the guidelines set forth in this section.

G. ~~Truncated coverage.~~ A credit involuntary unemployment insurance policy or certificate which provides truncated or critical period coverage, or any other type of similar coverage that does not provide benefits or coverage for the entire term or amount of the indebtedness, shall be subject to the following requirements:

1. The credit involuntary unemployment insurance policy or certificate shall include a statement printed on the face of the policy or first page of the certificate which clearly describes the limited nature

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60 of the insurance. The statement shall be printed in capital letters and in bold twelve-point or larger type;
61 and

62 2. The credit involuntary unemployment insurance policy or certificate shall not include any benefits
63 or coverage other than truncated or critical period coverage or any other type of similar coverage that
64 does not provide benefits or coverage for the entire term or amount of the indebtedness.

65 H. A portion of the premium charged for credit involuntary unemployment insurance may be allowed
66 by the insurer to the creditor for providing and furnishing such insurance, and no such allowance shall
67 be deemed a rebate of premium or as interest charges or consideration or an amount in excess of
68 permitted charges in connection with the loan or other credit transaction.

69 I. All of the acts necessary to provide and service credit involuntary unemployment insurance may be
70 performed within the same place of business in which is transacted the business giving rise to the loan
71 or other credit transaction.

72 J. Subsections A, B, C, D, E and K shall not apply to credit involuntary unemployment insurance
73 that will insure open end monthly outstanding balance credit transactions if the following criteria are
74 met:

75 1. Credit involuntary unemployment insurance that will insure the open end monthly outstanding
76 balance credit transaction is offered to the debtor after the loan or credit transaction it will insure has
77 been approved by the creditor and has been effective at least twenty-five days;

78 2. The solicitation for the insurance is by mail or telephone. The person making the solicitation shall
79 not condition the future use or continuation of the open end credit upon the purchase of credit
80 involuntary unemployment insurance;

81 3. The creditor makes available only one plan of credit involuntary unemployment insurance to the
82 debtor;

83 4. The debtor is provided written confirmation of the insurance coverage within thirty days of the
84 effective date of such coverage. The effective date of such coverage shall begin on the date the
85 solicitation is accepted; and

86 5. The individual policy or certificate has printed on it a notice stating that if, during a period of at
87 least thirty days from the date the policy or certificate is delivered to the policy owner or certificate
88 holder, the policy or certificate is surrendered to the insurer or its agent with a written request for
89 cancellation, the policy or certificate shall be void from the beginning and the insurer shall refund any
90 premium paid for the policy or certificate. This statement shall be prominently located on the face page
91 of the policy or certificate, and shall be printed in capital letters and in bold face twelve-point or larger
92 type.

93 K. Subsections A, B, C, D, E and J shall not apply to open end credit transactions by mail,
94 telephone or brochure solicitations that are not excluded from the requirements of subsections A, B, C,
95 D and E by subsection J where the insurer is offering only one plan of credit involuntary unemployment
96 insurance and the following criteria are met:

97 1. The following disclosures shall be included in solicitations, whether as part of the application or
98 enrollment request or separately:

99 a. The name and address of the insurer(s) and creditor; and

100 b. A description of the coverage offered, including the amount of coverage, the premium rate for
101 each plan of insurance offered, and a description of any exceptions, limitations or restrictions applicable
102 to such coverage.

103 2. The application or enrollment requests shall comply as follows:

104 a. Notwithstanding requirements set forth elsewhere, the application and enrollment request shall be
105 printed in a type size of not less than eight-point type, one-point leaded;

106 b. The application or enrollment request shall contain a prominent statement that the insurance
107 offered is optional, voluntary or not required;

108 c. The application or enrollment request shall contain no questions relating to insurability other than
109 the debtor's age or date of birth and active employment status; and

110 d. If the disclosures required by subdivision 1 of this subsection are not included in the application
111 or enrollment request, the application and enrollment request shall make reference to such disclosures
112 with sufficient information to assist the reader in locating such disclosures within separate solicitation
113 material.

114 3. Each insurer proposing to utilize an application or enrollment request in such transactions shall file
115 such form for approval by the Commission. If the insurer anticipates utilizing such application or
116 enrollment form in more than one solicitation, the insurer shall submit, as part of its filing of such form,
117 a certification signed by an officer of the insurer, stating that any such subsequent use of the application
118 or enrollment form will utilize the same form number and will not vary in substance from the wording
119 and format in which the form is submitted for approval. Upon approval of such application or
120 enrollment form by the Commission, the insurer shall be permitted to utilize such form in various
121 solicitation materials provided that the application or enrollment form, when incorporated into such

solicitation materials, has the same form number and wording substantially identical to that contained on the approved application or enrollment form. Notwithstanding the provisions of § 38.2-1921, when credit involuntary unemployment insurance is offered with credit life insurance or credit accident and sickness insurance, insurers may file one common form which shall be approved by the Commission and shall incorporate the requirements of subsection K of § 38.2-233 and subsection F of § 38.2-3737, according to the requirements stated in this paragraph and in *subdivision F 3 of § 38.2-3737 F 3*.

§ 38.2-1814. License required of resident property and casualty insurance agent.

No individual who is a resident of this Commonwealth shall obtain a license as a property and casualty insurance agent from the Commission unless he has passed a written examination prescribed by the Commission. However, any individual may obtain a license as a bail bond agent, mortgage guaranty insurance agent, ocean marine insurance agent, travel baggage insurance agent, *or an agent for insurance against risk of loss to personal property used as security for a loan or other credit transaction* without taking a written examination. Mutual assessment property and casualty insurance agents shall be licensed without examination only within the limitations of § 38.2-2525.

§ 38.2-3727. Credit accident and sickness insurance rates.

A. The Commission shall, based on a morbidity study, promulgate seven-, fourteen- and thirty-day retroactive and nonretroactive credit accident and sickness insurance premium rates which will reasonably be expected to produce the loss ratio as required by § 38.2-3725 E. These prima facie rates will be published by the Commission no later than September 1, 1992, and will be effective on or after January 1, 1993. After this date, the premium charged in connection with any credit accident and sickness insurance policy or certificate issued in this Commonwealth may not exceed the then-published prima facie rate as set forth in this section and as may be adjusted pursuant to § 38.2-3730.

The morbidity study shall be based on policies and certificates issued in this Commonwealth for the past three years, the premiums charged for those contracts and the experience produced by those contracts. The Commission may also take into consideration the reserves held on these contracts and the methods used to produce those reserves and any other information which the Commission in its discretion may consider necessary to produce a credible morbidity study.

B. The benefits provided by any credit accident and sickness insurance form shall be deemed reasonable in relation to the premium charged or to be charged if the rates do not exceed the rates initially published by the Commission pursuant to subsection A of this section, except as such rates are modified pursuant to the requirements of § 38.2-3730.

C. If premiums are paid on the basis of a premium rate per month per \$1,000 of outstanding insured indebtedness, they shall be computed according to the following formula or according to a formula approved by the Commission which produces rates actuarially equivalent to the single premium rates:

$$\text{Opn} = \frac{20}{n+1} \text{ Spn}$$

$$n+1$$

Where Spn = Single Premium Rate per \$100 of initial insured indebtedness repayable in n equal monthly installments.

Op = Monthly Outstanding Balance Premium Rate per \$1,000.

n = Original repayment period, in months.

D. A credit accident and sickness insurance form may not be issued with a waiting period, retroactive or nonretroactive, which differs from the waiting periods set forth in this section.

E. The premium rates in subsection B shall apply to policies providing credit accident and sickness insurance to be issued with or without evidence of insurability, to be offered to all eligible debtors, and containing:

1. No provision excluding or denying a claim for disability resulting from preexisting conditions except for those conditions for which the insured debtor received medical advice, diagnosis or treatment within six (6) months preceding the effective date of the debtor's coverage and which caused loss within the six months following the effective date of coverage. The effective date of coverage for each part of the insurance attributable to a different advance or charge to an open-end credit account is the date on which the advance or charge is posted to the plan account. *Waiver of this provision on preexisting conditions shall result in an additional premium equal to ten percent of the rates provided for under this section.*

2. No other provision which excludes or restricts liability in the event of disability caused in a specific manner except that it may contain provisions excluding or restricting coverage in the event of normal pregnancy and intentionally self-inflicted injuries.

3. No actively-at-work requirement more restrictive than one requiring that the debtor be actively at work at a full-time gainful occupation on the effective date of coverage. "Full-time" means a regular work week of not less than thirty hours. A debtor shall be deemed to be actively at work if absent from work due solely to regular day off, holiday or paid vacation.

183 4. No age restrictions, or only age restrictions making ineligible for coverage debtors sixty-five or
184 over at the time the indebtedness is incurred or debtors who will have attained age sixty-six or over on
185 the maturity date of the indebtedness.

186 5. A daily benefit equal in amount to one-thirtieth of the monthly benefit payable under the policy
187 for the indebtedness.

188 6. A definition of "disability" which provides that during the first twelve months of disability the
189 insured shall be unable to perform the duties of his occupation at the time the disability occurred, and
190 thereafter the duties of any occupation for which the insured is reasonably fitted by education, training
191 or experience.

192 7. A provision written in connection with an open-end credit plan which may provide for the
193 cessation of insurance or reduction in the amount of insurance upon attainment of an age not less than
194 sixty-five.

195 *F. Joint coverage on any of the bases in this section shall not exceed 180 percent of the rates*
196 *applicable to that type of coverage.*

197 § 38.2-3737. Application.

198 A. No contract of insurance upon a debtor shall be made or effectuated unless at the time of the
199 contract, the debtor, being of lawful age and competent to contract for insurance, applies for the
200 insurance in writing on a form approved by the Commission.

201 B. The application or enrollment request shall be required to:

202 1. Contain the name and signature of the agent who solicited the application or enrollment request;

203 2. Contain the name and address of the insurer and creditor; the name and age of the debtor(s); the
204 premium, rate or amount payable by the debtor separately for credit life insurance and credit accident
205 and sickness insurance; the type of insurance coverage provided; the date of application; and separately,
206 the amount and term, including the effective and cancellation dates, of the insurance and loan contracts;
207 and

208 3. Include the disclosure requirements set forth in subsections A, B, C and D of § 38.2-3735 unless
209 such requirements have been separately disclosed in another form or forms approved by the
210 Commission.

211 C. The application or enrollment request form shall be separate and apart from the loan or credit
212 transaction papers and will refer exclusively to insurance coverage.

213 D. No individual or group credit life insurance or credit accident and sickness insurance application
214 form shall contain a question of general good health unless the application form contains appropriate
215 specific questions concerning the applicant's health history or medical treatment history.

216 E. Neither this section nor subsection B of § 38.2-3735 shall apply to credit life or credit accident
217 and sickness insurance that will insure open-end monthly outstanding balance credit transactions if the
218 following criteria are met:

219 1. The credit life insurance and credit accident and sickness insurance that will insure the open-end
220 monthly outstanding balance credit transaction are offered to the debtor after the loan or credit
221 transaction that it will insure has been approved by the creditor ~~and has been effective at least~~
222 ~~twenty-five days~~;

223 2. The solicitation for the insurance is by mail or telephone. The person making the solicitation shall
224 not condition the future use or continuation of the open-end credit upon the purchase of credit life or
225 credit accident and sickness insurance;

226 3. The creditor makes available only one plan of credit life insurance and one plan of credit accident
227 and sickness insurance to the debtor;

228 4. The debtor is provided written confirmation of the insurance coverage within thirty days of the
229 effective date of such coverage. The effective date of coverage shall begin on the date the solicitation is
230 accepted; and

231 5. The individual policy or certificate has printed on it a notice stating that if, during a period of at
232 least thirty days from the date that the policy or certificate is delivered to the policyowner or certificate
233 holder, the policy or certificate is surrendered to the insurer or its agent with a written request for
234 cancellation, the policy or certificate shall be void from the beginning and the insurer shall refund any
235 premium paid for the policy or certificate. This statement shall be prominently included on the face page
236 of the policy or certificate, and shall be printed in capital letters and in bold 12-point or larger type.

237 F. The following shall be applicable to open-end credit transactions by mail, telephone, or brochure
238 solicitations, that are not excluded from the requirements of this section and of subsection B of
239 § 38.2-3735 by subsection E, where the insurer is offering only one plan of credit life insurance or one
240 plan of credit accident and sickness insurance:

241 1. Section 38.2-3735 shall not apply to such transactions, provided that the following disclosures are
242 included in such solicitations, whether as part of the application or enrollment request or separately:

243 a. The name and address of the insurer(s) and creditor; and

244 b. A description of the coverage offered, including the amount of coverage, the premium rate for

each plan of insurance offered, and a description of any exceptions, limitations, or restrictions applicable to such coverage.

2. Subsections B and D of this section shall not apply to such transactions, provided that the application or enrollment request utilized as part of such transaction:

a. Is printed in a type size of not less than eight-point type, one point leaded, notwithstanding the requirements set forth in subdivision D 5 of § 38.2-3724 regarding minimum type size for policies and certificates;

b. Contains a prominent statement that the insurance offered is optional, voluntary, or not required;

c. Contains no questions relating to insurability other than the debtor's age or date of birth and, if applicable, active employment status; and

d. If the disclosures required by subdivision 1 of this subsection are not included in the application or enrollment request, makes reference to such disclosures with sufficient information so as to assist the reader in locating such disclosures within the solicitation.

3. Each insurer proposing to utilize an application or enrollment request in such transactions shall file such form for approval by the Commission. If the insurer anticipates utilizing such application or enrollment form in more than one solicitation, the insurer shall submit, as part of its filing of such form, a certification signed by an officer of the insurer, stating that any such subsequent use of the application or enrollment form will utilize the same form number and will not vary in substance from the wording and format in which the form is submitted for approval. Upon approval of such application or enrollment form by the Commission, the insurer shall be permitted to utilize such form in various solicitation materials, provided that the application or enrollment form, when incorporated into such solicitation materials, has the same form number and wording substantially identical to that contained on the approved application or enrollment form.

G. Notwithstanding the provisions of subsection A, a contract of insurance may be made or effectuated in connection with a credit transaction between a creditor regulated pursuant to Chapter 4.01 (§ 6.1-225.1, et seq.) of Title 6.1 or 12 U.S.C. § 1751 et seq. and a debtor who is of lawful age, competent to contract for the insurance and a member of the creditor if:

1. The credit transaction and the solicitation for such insurance is effected by mail, telephone or other electronic means;

2. The purchase of credit insurance is not required by the creditor and is not a factor in granting the credit;

3. The creditor or insurer, within three business days after the credit transaction is effected, transmits to the debtor, either separately or with the documents that pertain to the credit transaction, an application or enrollment request form approved by the Commission which includes or to which is attached a prominent notice that clearly advises the debtor that unless he mails the completed and signed application or enrollment request to the creditor within forty-five days following the date of the credit transaction, all such coverage requested in connection with the credit transaction will be void from the beginning; and

4. In the event the debtor does not transmit the completed and signed application or enrollment request to the creditor within the time specified in subdivision 3, the full amount of the premium charged for the insurance is returned to or credited to the account of the debtor and written notice thereof is sent to the debtor within fifteen days of the date the policy or certificate is cancelled.