

VIRGINIA ACTS OF ASSEMBLY -- 1996 SESSION

CHAPTER 237

An Act to amend and reenact §§ 38.2-231 and 38.2-2114 of the Code of Virginia, relating to the procedure for cancellation of certain insurance policies.

[H 975]

Approved March 16, 1996

Be it enacted by the General Assembly of Virginia:

1. That §§ 38.2-231 and 38.2-2114 of the Code of Virginia are amended and reenacted as follows:

§ 38.2-231. Notice of cancellation, refusal to renew, reduction in coverage or increase in rate of certain liability insurance policies.

A. 1. No cancellation or refusal to renew by an insurer of a policy of insurance as defined in § 38.2-117 or § 38.2-118 insuring a business entity, or 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, or a policy of motor vehicle insurance against legal liability of the insured as defined in § 38.2-124 insuring a business entity, shall be effective unless the insurer delivers or mails to the named insured at the address shown on the policy a written notice of cancellation or refusal to renew. Such notice shall:

- 1- a. Be in a type size authorized under § 38.2-311;
- 2- b. State the date, which shall not be less than forty-five 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 fifteen 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;
- 3- c. State the specific reason or reasons of the insurer for cancellation or refusal to renew;
- 4- d. Advise the insured of its right to request in writing, within fifteen days of the receipt of the notice, that the Commissioner of Insurance review the action of the insurer; and
- 5- e. In the case of a policy of motor vehicle insurance, inform the 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 in writing the insurer or its agent 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.*

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 increase in the filed rate for such coverage greater than twenty-five percent initiated by an insurer of a policy of insurance defined in § 38.2-117 or § 38.2-118 insuring a business entity, or of a policy of insurance that includes as a part thereof insurance defined in § 38.2-117 or § 38.2-118 insuring a business entity, or a policy of motor vehicle insurance against legal liability of the insured as defined in § 38.2-124 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 named insured at the address shown on the policy a written notice of such reduction in coverage or rate increase not later than forty-five days prior to the effective date of same. Such notice shall:

1. Be in a type size authorized under § 38.2-311;
2. State the date, which shall not be less than forty-five days after the delivery or mailing of the notice of reduction in coverage or increase in rate, on which such reduction in coverage or increase in rate shall become effective;
3. State the manner in which coverage under an existing policy will be reduced or the amount of such rate increase;
4. State the specific reason or reasons for the reduction in coverage or increase in rate;
5. Advise the insured of its right to request in writing, within fifteen days of receipt of the notice, that the Commissioner of Insurance review the action of the insurer.

D. If an insurer does not provide notice in the manner required in subsection C, coverage shall remain in effect until forty-five days after written notice of reduction in coverage or increase in rate is mailed or delivered to the insured at the address shown on the policy, unless the insured obtains replacement coverage or elects to cancel sooner in either of which cases coverage under the prior policy shall cease on the effective date of the replacement coverage or the elected date of cancellation as the case may be. If the insured fails to accept or rejects the changed policy, coverage for any period that

extends beyond the expiration date will be under the prior policy's terms and conditions. If the insured accepts the changed policy, the reduction in coverage or increase in rate shall take effect upon the expiration of the prior policy.

E. Notice of reduction in coverage or increase in rate shall not be required if the insurer, after written demand, has not received, within forty-five days after such demand has been mailed or delivered to the insured at the address shown on the policy, sufficient information from the insured to provide the required notice, or if such notice is waived in writing by the insured.

F. No written notice of cancellation, refusal to renew, reduction in coverage or increase in rate that is mailed by an insurer to an insured in accordance with this section shall be effective unless:

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

- b. At the time of mailing the insurer obtains a written receipt from the United States Postal Service showing the name and address of the insured stated in the policy; and

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

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

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

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

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

I. Within fifteen days of receipt of the notice of cancellation, refusal to renew, reduction in coverage or increase in rate, the insured shall be entitled to request in writing to the Commissioner that he review the action of the insurer. Upon receipt of the request, the Commissioner shall promptly begin a review to determine whether the insurer's notice of cancellation, refusal to renew, reduction in coverage or rate increase complies with the requirements of this section. Where the Commissioner finds from the review that the notice of cancellation, refusal to renew, reduction in coverage or rate increase does not comply with the requirements of this section, 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 such notice is not effective. Nothing in this section authorizes the Commissioner to substitute his judgment as to underwriting for that of the insurer. Pending review by the Commission, this section shall not operate to relieve an insured from the obligation to pay any premium when due; however, if the Commission finds that the notice required by this section was not proper, the Commission may order the insurer to pay to the insured any overpayment of premium made by the insured.

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

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

§ 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 *or his duly constituted attorney-in-fact* 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 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.

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.