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SENATE BILL NO. 922

Offered January 15, 1997

A *BILL to amend and reenact §§ 38.2-2113 and 38.2-2114 of the Code of Virginia, relating to fire insurance policies; notice of cancellation or refusal to renew, and grounds and procedures for termination.*

Patrons—Ticer, Gartlan, Howell, Lucas, Saslaw, Whipple and Woods; Delegates: Callahan, Dillard, Keating, McClure, Moran, Plum, Puller, Rust, Scott and Watts

Referred to the Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 38.2-2113 and 38.2-2114 of the Code of Virginia are amended and reenacted as follows:

§ 38.2-2113. Mailing of notice of cancellation or refusal to renew.

A. No written notice of cancellation or refusal to renew a policy written to insure owner-occupied dwellings shall be effective when mailed by an insurer unless:

1. a. It is sent by registered or certified mail, ~~or return receipt requested~~, and
- 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;
2. The insurer retains a copy of the notice of cancellation or refusal to renew.

3. [Repealed.]

B. This section shall not apply to policies written through the Virginia Property Insurance Association or any other residual market facility established pursuant to Chapter 27 (§ 38.2-2700 et seq.) of this title.

C. If the terms of the policy require the notice of cancellation or refusal to renew to be given to any lienholder, then the insurer shall mail such notice *by registered or certified mail, return receipt requested*, and retain a copy of the notice in the manner required by subsection A of this section. 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, *or certified* ~~or regular~~ mail postal receipt, *return receipt*, and copy of the notices required by this section shall be retained by the insurer for at least one year from the date of termination.

D. Copy, as used in this section, 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.

§ 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 (i) *mailed by registered or certified mail, return receipt requested*, or (ii) delivered to the 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, *by registered or certified mail, return receipt requested*, 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

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60 subsection A of this section, the date that the insurer proposes to terminate the policy may be less than
61 thirty days but at least ten days from the date of mailing or delivery;

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

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

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

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

71 D. Within ten days of receipt of the notice of termination any insured or his attorney shall be entitled
72 to request in writing to the Commissioner that he review the action of the insurer in terminating a policy
73 or contract written to insure owner-occupied dwellings. Upon receipt of the request, the Commissioner
74 shall promptly initiate a review to determine whether the insurer's cancellation or refusal to renew
75 complies with the requirements of this section and of § 38.2-2113, if sent by mail. The policy shall
76 remain in full force and effect during the pendency of the review by the Commissioner except where the
77 cancellation or refusal to renew is for reason of nonpayment of premium, in which case the policy shall
78 terminate as of the date stated in the notice. Where the Commissioner finds from the review that the
79 cancellation or refusal to renew has not complied with the requirements of this section or of
80 § 38.2-2113, if sent by mail, he shall immediately notify the insurer, the insured, and any other person
81 to whom notice of cancellation or refusal to renew was required to be given by the terms of the policy
82 that the cancellation or refusal to renew is not effective. Nothing in this section authorizes the
83 Commissioner to substitute his judgment as to underwriting for that of the insurer.

84 E. Nothing in this section shall apply:

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

88 2. If the insurer or its agent acting on behalf of the insurer has manifested its willingness to renew
89 by issuing or offering to issue a renewal policy, certificate or other evidence of renewal, or has
90 otherwise manifested its willingness to renew in writing to the insured. The written manifestation shall
91 include the name of a proposed insurer, the expiration date of the policy, the type of insurance coverage
92 and information regarding the estimated renewal premium;

93 3. If the named insured or his duly constituted attorney-in-fact has notified the insurer or its agent in
94 writing that he wishes the policy to be cancelled, or that he does not wish the policy to be renewed, or
95 if, prior to the date of expiration, he fails to accept the offer of the insurer to renew the policy; or

96 4. To any contract or policy written through the Virginia Property Insurance Association or any
97 residual market facility established pursuant to Chapter 27 (§ 38.2-2700 et seq.) of this title.

98 F. Each insurer shall maintain, for at least one year, records of cancellation and refusal to renew and
99 copies of every notice or statement referred to in subsection E of this section that it sends to any of its
100 insureds.

101 G. There shall be no liability on the part of and no cause of action of any nature shall arise against
102 the Commissioner or his subordinates; any insurer, its authorized representative, its agents, its
103 employees; or any firm, person or corporation furnishing to the insurer information as to reasons for
104 cancellation or refusal to renew, for any statement made by any of them in complying with this section
105 or for providing information pertaining to the cancellation or refusal to renew.

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

109 I. No insurer or agent shall refuse to renew a policy written to insure an owner-occupied dwelling,
110 solely because of any one or more of the following factors:

111 1. Age;

112 2. Sex;

113 3. Residence;

114 4. Race;

115 5. Color;

116 6. Creed;

117 7. National origin;

118 8. Ancestry;

119 9. Marital status;

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

122 increase materially the risk;

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

151 12. Any claim resulting primarily from natural causes.

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

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