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HOUSE BILL NO. 721**AMENDMENT IN THE NATURE OF A SUBSTITUTE**

(Proposed by the House Committee on Corporations, Insurance and Banking
on December 15, 1998)

(Patron Prior to Substitute—Delegate Cantor)

A BILL to amend and reenact §§ 38.2-233, 38.2-1800, 38.2-1814, 38.2-1822, 38.2-1824, 38.2-3725, 38.2-3735, and 38.2-3737 of the Code of Virginia, relating to credit insurance.

Be it enacted by the General Assembly of Virginia:

1. That §§ 38.2-233, 38.2-1800, 38.2-1814, 38.2-1822, 38.2-1824, 38.2-3725, 38.2-3735, 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, if any, soliciting the application or the creditor's representative, if any, 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.

Nothing contained in this subsection shall be construed to prohibit the creditor from combining such disclosure, in order to avoid redundancy, with other forms of disclosure required under state or federal law.

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. *Nothing contained in this subsection shall be construed to prohibit the creditor from combining such disclosure, in order to avoid redundancy, with other forms of disclosure required under state or federal law.*

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. 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. *A form shall be deemed acceptable under this section if the insurer certifies that the form achieves a Flesch Readability Score of forty or more, using the Flesch Readability Formula as set forth in Rudolf Flesch, The Art of Readable Writing (1949, as revised 1974), and certifies compliance with the guidelines set forth in this section.*

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

63 1. The credit involuntary unemployment insurance policy or certificate shall include a statement
64 printed on the face of the policy or first page of the certificate which clearly describes the limited nature
65 of the insurance. The statement shall be printed in capital letters and in bold twelve-point or larger type;
66 and

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

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

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

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

80 1. Credit involuntary unemployment insurance that will insure the open end monthly outstanding
81 balance credit transaction is offered to the debtor after the loan or credit transaction it will insure has
82 been approved by the creditor and has been effective at least seven days;

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

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

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

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

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

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

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

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

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

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

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

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

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

119 3. Each insurer proposing to utilize an application or enrollment request in such transactions shall file
120 such form for approval by the Commission. If the insurer anticipates utilizing such application or
121 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. 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.

§ 38.2-1800. Definitions.

As used in this chapter:

"Agent" or "insurance agent," when used without qualification, means an individual, partnership, limited liability company, or corporation that solicits, negotiates, procures or effects contracts of insurance or annuity in this Commonwealth.

"Appointed agent" or "appointed insurance agent," when used without qualification, means an individual, partnership, limited liability company, or corporation licensed in this Commonwealth to solicit, negotiate, procure, or effect contracts of insurance or annuity of the classes authorized within the scope of such license and who is appointed by a company licensed in this Commonwealth to solicit, negotiate, procure, or effect in its behalf contracts of insurance of the classes authorized within the scope of such license and, if authorized by the company, may collect premiums on those contracts.

"Automobile club agent" means an agent licensed in this Commonwealth to solicit, negotiate, procure, or effect automobile club contracts on behalf of automobile clubs licensed under Chapter 3.1 (§ 13.1-400.1 et seq.) of Title 13.1.

"Bail bond agent" means an agent licensed in this Commonwealth for the sole purpose of writing appearance bonds as surety, as defined in subdivision 3 of § 38.2-121.

"Burial insurance agent" means an agent licensed in this Commonwealth to solicit, negotiate, procure, or effect burial insurance on behalf of insurers licensed under Chapter 40 (§ 38.2-4000 et seq.) of this title.

"Cooperative nonprofit life benefit insurance agent" means an agent licensed in this Commonwealth to solicit, negotiate, procure, or effect life insurance, accident and sickness insurance or annuities on behalf of insurers licensed under Chapter 38 (§ 38.2-3800 et seq.) of this title.

"Credit life and health insurance agent" means an agent licensed in this Commonwealth exclusively to solicit, negotiate, procure, or effect credit life insurance and credit accident and sickness insurance on behalf of insurers licensed in this Commonwealth, but only to the extent authorized in Chapter 37.1 (§ 38.2-3717 et seq.) of this title.

"Credit property and involuntary unemployment insurance agent" means an agent licensed in this Commonwealth to solicit, negotiate, procure, or effect insurance *as defined in § 38.2-122.1* or insurance against direct physical damage to personal household property used as security for a loan or other credit transaction. Such insurance may insure the creditor as sole beneficiary or may insure both the creditor and the debtor with the creditor as primary beneficiary and the debtor as beneficiary of proceeds not paid to the creditor. As used in this definition, "~~household~~ personal household property" does not include motor vehicles, mobile homes, or watercraft.

"Dental services agent" means an agent licensed in this Commonwealth to solicit, negotiate, procure, or effect dental services plan contracts on behalf of dental services plans licensed under Chapter 45 (§ 38.2-4500 et seq.) of this title.

"Filed" means received by the Commission.

"Health agent" means an agent licensed in this Commonwealth to solicit, negotiate, procure, or effect applications and coverage on behalf of corporations licensed in this Commonwealth under Chapter 42 (§ 38.2-4200 et seq.) of this title or for health maintenance organizations licensed in this Commonwealth under Chapter 43 (§ 38.2-4300 et seq.) of this title. Nothing in this chapter prohibits any person licensed in this Commonwealth as a life and health agent from also acting as a health agent.

"Legal services agent" means an agent licensed in this Commonwealth to solicit, negotiate, procure, or effect legal services plan contracts on behalf of legal services plans licensed under Chapter 44 (§ 38.2-4400 et seq.) of this title.

"Licensed agent" or "licensed insurance agent," when used without qualification, means an individual, partnership, limited liability company, or corporation licensed in this Commonwealth to solicit, negotiate, procure or effect contracts of insurance or annuity of the classes authorized within the scope of such license.

"Life and health insurance agent" means an agent licensed in this Commonwealth to solicit,

183 negotiate, procure, or effect life insurance, annuity contracts, and accident and sickness insurance as
184 defined in §§ 38.2-102, 38.2-103, 38.2-104, 38.2-106, 38.2-108 and 38.2-109, respectively, and variable
185 contracts as defined in §§ 38.2-105 and 38.2-107, if so qualified, on behalf of insurers licensed in this
186 Commonwealth. Except as otherwise provided, limitations or restrictions as to methods of compensation
187 imposed by this title on agents shall not apply to life and health insurance agents.

188 "Mortgage accident and sickness insurance agent" means an agent licensed in this Commonwealth to
189 solicit, negotiate, procure, or effect mortgage accident and sickness insurance on behalf of insurers
190 licensed in this Commonwealth.

191 "Mortgage guaranty insurance agent" means an agent licensed in this Commonwealth to solicit,
192 negotiate, procure, or effect mortgage guaranty insurance on behalf of insurers licensed in this
193 Commonwealth.

194 "Mortgage redemption insurance agent" means an employee of a lending institution, whether or not
195 the institution accepts deposits from the public, licensed in this Commonwealth to solicit, negotiate,
196 procure, or effect mortgage redemption insurance and mortgage accident and sickness insurance.

197 "Mortgage redemption insurance" means a nonrenewable, nonconvertible, decreasing term life insurance
198 policy written in connection with a mortgage transaction for a period of time coinciding with the term
199 of the mortgage. The initial sum shall not exceed the amount of the indebtedness outstanding at the time
200 the insurance becomes effective, rounded up to the next \$1,000.

201 "Motor vehicle rental contract insurance agent" means a person who (i) is a selling agent of a motor
202 vehicle rental company that is in the business of providing primarily private passenger motor vehicles to
203 the public under a rental agreement for a period of less than six months and (ii) is licensed in the
204 Commonwealth as an agent to solicit, negotiate, procure, or effect the following insurance coverages
205 solely in connection with and incidental to the rental contract:

206 1. Personal accident insurance which provides benefits in the event of accidental death or injury
207 occurring during the rental period;

208 2. Liability coverage sold to the renter in excess of the rental company's obligations under
209 §§ 38.2-2204, 38.2-2205, or Title 46.2, as applicable;

210 3. Personal effects insurance which provides coverages for the loss of or damage to the personal
211 effects of the renter and other vehicle occupants while such personal effects are in or upon the rental
212 vehicle during the rental period;

213 4. Roadside assistance and emergency sickness protection programs; and

214 5. Other travel-related or vehicle-related insurance coverage that a motor vehicle rental company
215 offers in connection with and incidental to the rental of vehicles.

216 "Mutual assessment life and health insurance agent" means an agent licensed in this Commonwealth
217 to solicit, negotiate, procure, or effect mutual assessment life and accident and sickness insurance on
218 behalf of insurers licensed under Chapter 39 (§ 38.2-3900 et seq.) of this title.

219 "Mutual assessment property and casualty insurance agent" means an agent licensed in this
220 Commonwealth to solicit, negotiate, procure, or effect mutual assessment property and casualty insurance
221 on behalf of insurers licensed under Chapter 25 (§ 38.2-2500 et seq.) of this title.

222 "Ocean marine insurance agent" means an agent licensed in this Commonwealth to solicit, negotiate,
223 procure, or effect those classes of insurance classified in § 38.2-126, except those kinds specifically
224 classified as inland marine insurance, on behalf of insurers licensed in this Commonwealth.

225 "Optometric services agent" means an agent licensed in this Commonwealth to solicit, negotiate,
226 procure, or effect optometric services plan contracts on behalf of optometric services plans licensed
227 under Chapter 45 (§ 38.2-4500 et seq.) of this title.

228 "Pet accident, sickness and hospitalization insurance agent" means an agent licensed in this
229 Commonwealth to solicit, negotiate, procure or effect pet accident, sickness and hospitalization insurance
230 on behalf of insurers licensed in this Commonwealth.

231 "Property and casualty insurance agent" means an agent licensed in this Commonwealth to solicit,
232 negotiate, procure, or effect insurance as defined in §§ 38.2-110 through 38.2-122.1, and §§ 38.2-124
233 through 38.2-134 on behalf of insurers licensed in this Commonwealth.

234 "Resident" means (i) an individual domiciled and residing in Virginia; (ii) a partnership duly formed
235 and recorded in Virginia; (iii) a corporation incorporated and existing under the laws of Virginia; or (iv)
236 a limited liability company organized and existing under the laws of Virginia.

237 "Single interest insurance agent" means an agent licensed in this Commonwealth to solicit, negotiate,
238 procure, or effect single interest insurance on behalf of insurers licensed in this Commonwealth.

239 "Solicit, negotiate, procure, or effect" means and includes the selling or attempted selling, placing or
240 attempted placing of insurance or coverage, whether directly or indirectly, in this Commonwealth, and
241 for which action the agent receives, or would receive, direct or indirect compensation in the form of
242 commissions, fees, or other inducements or benefits.

243 "Title insurance agent" means an agent licensed in this Commonwealth to solicit, negotiate, procure,
244 or effect title insurance on behalf of title insurance companies licensed under Chapter 46 (§ 38.2-4600 et

seq.) of this title.

"Travel accident insurance agent" means an individual at transportation terminal buildings, or a ticket-selling agent of a railroad, steamship company, air carrier, or public bus carrier, who is licensed in this Commonwealth solely to act as an agent in the sale of travel accident insurance to individuals.

"Travel baggage insurance agent" means the ticket-selling agent of a railroad or steamship company, air carrier, or public bus carrier who is licensed in this Commonwealth solely to act as an agent in the sale of travel baggage insurance to individuals.

"Variable contract agent" means an agent licensed in this Commonwealth to solicit, negotiate, procure, or effect variable contracts on behalf of insurers licensed in this Commonwealth.

§ 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 an automobile club agent, bail bond agent, credit property *and involuntary unemployment* insurance agent, mortgage guaranty insurance agent, motor vehicle rental contract insurance agent, ocean marine insurance agent, pet accident, sickness and hospitalization insurance agent or travel baggage insurance agent 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.

§ 38.2-1822. License required of agents; individual acting for partnership, limited liability company, or corporate licensee.

A. No person shall act, and no insurer or licensed agent shall knowingly permit a person to act, in this Commonwealth as an agent of an insurer licensed to transact the business of insurance in this Commonwealth without first obtaining a license in a manner and in a form prescribed by the Commission. As used in this section, "act as an agent" means soliciting, negotiating, procuring, or effecting contracts of insurance or annuity on behalf of an insurer licensed in this Commonwealth or receiving or sharing, directly or indirectly, any commission or other valuable consideration arising therefrom. No person shall submit business to any joint underwriting association or any plan established under this title for the equitable distribution of risks among insurers unless the person holds a valid license to transact the class of insurance involved.

B. No individual shall act as an agent on behalf of either a partnership, limited liability company, or a corporation in the transaction of insurance unless he is licensed as an agent and appointed, if appointment is required by statute.

C. No partnership, limited liability company, or corporation may act as an agent in this Commonwealth unless licensed and appointed, if appointment is required by statute. The existence of the partnership, limited liability company, or corporation shall be recorded pursuant to law, and the authority of the corporation to act as an insurance agent or agency shall be specifically set forth in its charter. The Commission may require proof of the foregoing before issuing a license to the partnership, limited liability company, or corporation.

D. For a nonresident partnership, a nonresident limited liability company, or a nonresident corporation, a certification by the insurance department of the nonresident's state of domicile satisfying the requirements of subsection A of § 38.2-1836 shall be deemed to satisfy the foregoing requirements.

E. In addition to the requirements of §§ 59.1-69 and 59.1-70, any person, partnership, limited liability company, or corporation conducting the business of insurance in this Commonwealth under an assumed or fictitious name shall notify the Bureau of Insurance, in writing, either at the time the application for a license to do business is filed or the assumed or fictitious name is adopted, setting forth the name under which such business is to be conducted.

F. When the business of insurance is no longer conducted under an assumed or fictitious name, written notification to the Bureau of Insurance is required as soon as practicable.

G. Notwithstanding any other provision in this chapter, no license shall be required of a person whose employment responsibilities include enrolling individuals under a group insurance policy, provided that such person receives no commission or other valuable consideration for such enrollments, and that such compensation is in no manner contingent under the number of individuals enrolled or the amount of premium generated by such enrollments. As used in this subsection "enrolling individuals" means the process of informing individuals of the availability of coverages, calculating the insurance charge, assisting with completion of the enrollment application, preparing and delivering the certificate of insurance, answering questions regarding the coverages, and assisting the individual in making an informed decision whether or not enrollment under the group insurance plan is to be elected.

§ 38.2-1824. Kinds of agents' licenses and appointments issued.

A. The Commission shall issue the following kinds of agents' licenses and appointments: life and health insurance, property and casualty insurance, automobile club, cooperative nonprofit life benefit insurance, bail (appearance) bonds, burial insurance, credit life and health insurance, credit property *and*

306 *involuntary unemployment* insurance, dental services insurance, health insurance, legal services insurance,
307 mortgage accident and sickness insurance, mortgage guaranty insurance, mortgage redemption insurance,
308 motor vehicle rental contract insurance, mutual assessment property and casualty insurance, mutual
309 assessment life and health insurance, ocean marine insurance, optometric services insurance, pet accident,
310 sickness and hospitalization insurance, title insurance, travel accident insurance, travel baggage
311 insurance, and variable contract insurance.

312 B. All individuals and agencies who on July 1, 1987, held limited licenses to write accident and
313 sickness insurance, or automobile insurance, or casualty insurance, or fidelity and surety bonds, or fire
314 insurance, or life insurance and annuities, may remain licensed under such limited licenses, but no such
315 license which has lapsed or been revoked shall be reinstated, and no new or additional licenses for any
316 of the categories enumerated above shall be issued.

317 § 38.2-3725. Policy forms to be filed with Commission; approval or disapproval by Commission.

318 A. No form shall be delivered or issued for delivery in this Commonwealth until a copy of each
319 form has been filed with and approved by the Commission.

320 B. If a group policy of credit life or credit accident and sickness insurance is delivered in another
321 state, the insurer shall be required to file the group certificate, application or enrollment request, and
322 notice of proposed insurance delivered or issued for delivery in this state for approval. These forms shall
323 comply with § 38.2-3724, with the exception of subsection D and § 38.2-3737. The premium rates shall
324 comply with those established in this chapter or it must be demonstrated to the satisfaction of the
325 Commission that the rates are actuarially equivalent to those required by §§ 38.2-3726 and 38.2-3727 if
326 the coverage differs from that required in Virginia. In no case shall the premiums exceed those set by
327 the Commission in §§ 38.2-3726 and 38.2-3727, as amended by § 38.2-3730.

328 C. The Commission shall disapprove or withdraw approval previously given to any form if the
329 Commission determines that:

330 1. It does not comply with the laws of this Commonwealth;

331 2. It contains any provision or has any title, heading, backing or other indication of the contents of
332 any or all of its provisions which encourage misrepresentation or are unjust, unfair, misleading,
333 deceptive or contrary to the public policy of this Commonwealth; or

334 3. The premium rates or charges are not reasonable in relation to the benefits provided.

335 D. The benefits provided by any credit life insurance form shall be considered reasonable in relation
336 to the premium charged provided that the rate does not exceed the current prima facie rate set by the
337 Commission. The prima facie rate that shall be effective January 1, 1993, shall be that set forth in
338 § 38.2-3726. Thereafter, effective January 1, 1995, the Commission shall, on a triennial basis, set forth
339 adjusted prima facie rates that will achieve a sixty percent loss ratio. The methodology used by the
340 Commission in setting the prima facie rates shall be as set forth in § 38.2-3730. The prima facie rates
341 shall be provided to insurers no later than September 1 prior to each triennium and shall be effective as
342 to all forms issued on or after January 1 of the following triennium.

343 E. The benefits provided by any credit accident and sickness insurance form shall be considered
344 reasonable in relation to the premium charged provided that the rate does not exceed the current prima
345 facie rates set by the Commission. The Commission shall set forth adjusted prima facie rates that will
346 achieve a fifty percent loss ratio as of January 1, 1993, and adjusted prima facie rates that will achieve a
347 sixty percent loss ratio as of January 1, 1995. Thereafter, the Commission shall, on a triennial basis, set
348 forth adjusted prima facie rates that will achieve a sixty percent loss ratio. The methodology used by the
349 Commission in setting the prima facie rates shall be as set forth in § 38.2-3730. The prima facie rates
350 shall be provided to insurers no later than September 1, 1992, for the rates to be effective January 1,
351 1993; September 1, 1994, for the rates to be effective January 1, 1995; and September 1 prior to each
352 triennium thereafter, and shall be effective as to all forms issued on or after such January 1.

353 F. If necessary to assure availability of credit insurance, the Commission may consider other factors
354 in order to provide a fair return to insurers. *These other factors may include, but are not limited to, the*
355 *following: (i) actual and expected loss experience; (ii) general and administrative expenses; (iii) loss*
356 *settlement and adjustment expenses; (iv) reasonable creditor compensation; (v) investment income; (vi)*
357 *the manner in which premiums are charged; (vii) other acquisition costs, reserves, taxes, regulatory*
358 *license fees and fund assessments; and (viii) other relevant data consistent with generally accepted*
359 *actuarial standards.*

360 G. The Commission shall, within thirty days after the filing of any form requiring approval, notify
361 the insurer filing the form of the form's approval or disapproval. If a form is disapproved, the
362 Commission shall also notify the insurer of its reasons for disapproval. The Commission may extend the
363 period within which it shall indicate its approval or disapproval of a form by thirty days. Any form
364 received but not approved or disapproved by the Commission shall be deemed approved at the
365 expiration of the thirty days, or sixty days if the period is extended. No insurer shall use a form deemed
366 approved under the provisions of this section until the insurer has filed with the Commission a written
367 notice of its intent to use the form together with a copy of the form and the original transmittal letter

thereof. The notice shall be filed in the offices of the Commission at least ten days prior to the insurer's use of the form.

H. If the Commission proposes to withdraw approval previously given to any form, it shall notify the insurer in writing not less than thirty days prior to the proposed effective date of withdrawal and give its reasons for withdrawal. No insurer shall issue such forms or use them after the effective date of withdrawal, except as provided in subsection I of this section.

I. Any insurer aggrieved by the disapproval or withdrawal of approval of any form may proceed as indicated in § 38.2-1926.

§ 38.2-3735. Disclosure and readability.

A. If a creditor makes available to the debtors more than one plan of credit life insurance or more than one plan of credit accident and sickness insurance, all debtors must be informed of all such plans for which they are eligible. In the case of credit life insurance:

1. If a creditor offers a plan of insurance that insures the actual amount of unpaid indebtedness, the creditor shall also offer to the debtor a plan of insurance that insures only the actual amount of indebtedness less any unearned interest or finance charges; and

2. In the event that a plan of insurance that insures the actual amount of unpaid indebtedness is offered, the creditor shall provide to each debtor a disclosure form which shall clearly disclose the difference in premiums charged for a contract wherein the gross indebtedness is insured versus a contract wherein only the net indebtedness is insured. This disclosure shall include the differences between the amount financed, the monthly payment and the total charge for each type of insurance. The form shall be signed and dated by the debtor and the agent, *if any*, soliciting the application or the creditor's representative, *if any*, 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.

Nothing contained in this subsection shall be construed to prohibit the creditor from combining such disclosure, in order to avoid redundancy, with other forms of disclosure required under state or federal law.

B. When elective credit insurance is offered, the borrower must be given written disclosure that purchase of credit 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 insurance, the debtor must be given:

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

2. A disclosure form which shall clearly disclose the difference in premiums charged for a contract with credit insurance and one without credit insurance. This disclosure shall include the difference between the amount financed, the monthly payment and the charge for each kind of insurance. The form shall be signed and dated by the debtor and the agent, *if any*, soliciting the application or the creditor's representative, *if any*, 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.

Nothing contained in this subsection shall be construed to prohibit the creditor from combining such disclosure, in order to avoid redundancy, with other forms of disclosure required under state or federal law.

D. If credit life insurance or credit accident and sickness 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. *Nothing contained in this subsection shall be construed to prohibit the creditor from combining such disclosure, in order to avoid redundancy, with other forms of disclosure required under state or federal law.*

E. Readability. - The Commission shall not approve any form 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. *A form shall be deemed acceptable under this section if the insurer certifies that the form achieves a Flesch Readability Score of forty or more, using the Flesch Readability Formula as set forth in Rudolf Flesch, The Art of Readable Writing (1949, as revised 1974), and certifies*

429 *compliance with the guidelines set forth in this section.*

430 § 38.2-3737. Application.

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

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

435 1. Contain the name and signature of the agent *or creditor's representative, if any*, who solicited the
436 application or enrollment request;

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

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

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

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

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

453 1. The credit life insurance and credit accident and sickness insurance that will insure the open-end
454 monthly outstanding balance credit transaction are offered to the debtor after the loan or credit
455 transaction that it will insure has been approved by the creditor and has been effective at least seven
456 days;

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

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

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

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

471 F. The following shall be applicable to open-end credit transactions by mail, telephone, or brochure
472 solicitations, that are not excluded from the requirements of this section and of subsection B of
473 § 38.2-3735 by subsection E, where the insurer is offering only one plan of credit life insurance or one
474 plan of credit accident and sickness insurance:

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

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

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

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

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

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

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

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

491 reader in locating such disclosures within the solicitation.

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

502 G. Notwithstanding the provisions of subsection A, a contract of insurance may be made or
503 effectuated in connection with a credit transaction between a creditor regulated pursuant to Chapter 4.01
504 (§ 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,
505 competent to contract for the insurance and a member of the creditor if:

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

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

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

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