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**SENATE BILL NO. 298**

Offered January 13, 2010

Prefiled January 12, 2010

*A BILL to amend and reenact § 38.2-2114 of the Code of Virginia, relating to grounds for canceling, nonrenewing, or increasing rates of property insurance policies; defective drywall.*

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Patron—Miller, J.C.

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Referred to Committee on Commerce and Labor

**Be it enacted by the General Assembly of Virginia:****1. That § 38.2-2114 of the Code of Virginia is amended and reenacted as follows:**

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

A. Notwithstanding the provisions of § 38.2-2105, no policy or contract written to insure owner-occupied dwellings shall be canceled 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;
5. Physical changes in the property which result in the property becoming uninsurable as determined from a physical inspection of the insured premises; or
6. Foreclosure efforts by the secured party against the subject property covered by the policy that have resulted in the sale of the property by a trustee under a deed of trust as duly recorded in the land title records of the jurisdiction in which the property is located.

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, or delivers electronically to the address provided by the named insured, 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 30 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 30 days but at least 10 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 canceled or not renewed for the reason set forth in subdivision 1 of subsection A of this section;

3. Advise the insured that within 10 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 10 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, or delivered electronically if a notice of refusal to renew. 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

59 complied with the requirements of this section or of § 38.2-2113, if sent by mail or delivered  
60 electronically if a notice of refusal to renew, he shall immediately notify the insurer, the insured, and  
61 any other person to whom notice of cancellation or refusal to renew was required to be given by the  
62 terms of the policy that the cancellation or refusal to renew is not effective. Nothing in this section  
63 authorizes the Commissioner to substitute his judgment as to underwriting for that of the insurer.

64 E. Nothing in this section shall apply:

65 1. To any policy written to insure owner-occupied dwellings that has been in effect for less than 90  
66 days when the notice of termination is mailed or delivered to the insured, unless it is a renewal policy;

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

72 3. If the named insured or his duly constituted attorney-in-fact has notified the insurer or its agent  
73 orally, or in writing, if the insurer requires such notification to be in writing, that he wishes the policy  
74 to be canceled, or that he does not wish the policy to be renewed, or if, prior to the date of expiration,  
75 he fails to accept the offer of the insurer to renew the policy;

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

78 5. If an affiliated insurer has manifested its willingness to provide coverage at a lower premium than  
79 would have been charged for the same exposures on the expiring policy. The affiliated insurer shall  
80 manifest its willingness to provide coverage by issuing a policy with the types and limits of coverage at  
81 least equal to those contained in the expiring policy unless the named insured has requested a change in  
82 coverage or limits. When such offer is made by an affiliated insurer, an offer of renewal shall not be  
83 required of the insurer of the expiring policy, and the policy issued by the affiliated insurer shall be  
84 deemed to be a renewal policy.

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

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

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

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

98 1. Age;

99 2. Sex;

100 3. Residence;

101 4. Race;

102 5. Color;

103 6. Creed;

104 7. National origin;

105 8. Ancestry;

106 9. Marital status;

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

110 11. Credit information contained in a "consumer report," as defined in the federal Fair Credit  
111 Reporting Act, 15 U.S.C. § 1681 et seq., bearing on a natural person's creditworthiness, credit standing  
112 or credit capacity. If credit information is used, in part, as the basis for the nonrenewal, such credit  
113 information shall be based on a consumer report procured within 120 days from the effective date of the  
114 nonrenewal;

115 12. Any claim resulting primarily from natural causes;

116 13. One or more claims that were incurred more than 60 months immediately prior to the expiration  
117 of the current policy period; or

118 14. Any inquiry from an insured about his insurance coverage or policy provisions. For purposes of  
119 this subdivision, "inquiry" means a written or oral communication by an insured seeking information  
120 regarding coverage or policy provisions that does not notify the insurer of a loss, incident or accident,

121 and that does not provide information indicating an increase in the hazard insured against. An insurer  
122 shall not report any inquiry as a claim to a loss history database maintained by a consumer reporting  
123 agency or insurance support organization.

124 ~~Nothing~~ *Except as provided in subsection K, nothing* in this section prohibits any insurer from setting  
125 rates in accordance with relevant actuarial data.

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

128 K. *No insurer shall cancel or refuse to renew, or increase rates on, a policy written to insure an*  
129 *owner-occupied dwelling solely because of the use in the construction of the dwelling of defective*  
130 *drywall. As used in this subsection, "defective drywall" means drywall, or similar building material*  
131 *composed of dried gypsum-based plaster, that (i) as a result of containing the same or greater levels of*  
132 *strontium sulfide that has been found in drywall manufactured in the People's Republic of China and*  
133 *imported into the United States between 2004 and 2007 is capable, when exposed to heat, humidity, or*  
134 *both, of releasing sulfur dioxide, hydrogen sulfide, carbon disulfide, or other sulfur compounds into the*  
135 *air or (ii) has been designated by the U.S. Consumer Product Safety Commission as a product with a*  
136 *product defect that constitutes a substantial product hazard within the meaning of § 15(a)(2) of the*  
137 *Consumer Product Safety Act (15 U.S.C. § 2064(a)(2)).*