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## HOUSE BILL NO. 1528

Offered January 9, 2013

Prefiled January 3, 2013

A *BILL to amend and reenact § 38.2-231 of the Code of Virginia, relating to commercial insurance policies; notices to insureds.*

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Referred to Committee on Commerce and Labor

**Be it enacted by the General Assembly of Virginia:****1. That § 38.2-231 of the Code of Virginia is amended and reenacted as follows:****§ 38.2-231. Notice of cancellation, refusal to renew, reduction in coverage or increase in premium of certain liability insurance policies.**

A. 1. No cancellation or refusal to renew by an insurer of (i) a policy of insurance as defined in § 38.2-117 or 38.2-118 insuring a business entity; (ii) 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; (iii) a policy of motor vehicle insurance against legal liability of the insured as defined in § 38.2-124 insuring a business entity; or (iv) a policy of miscellaneous casualty insurance as defined in subsection B of § 38.2-111 insuring a business entity, shall be effective unless the insurer delivers or mails to the *first* named insured at the address shown on the policy a written notice of cancellation or refusal to renew; however, if the written notice is a notice of refusal to renew, it may be delivered electronically to the address provided by the *first* named insured. Such notice shall:

a. Be in a type size authorized under § 38.2-311;

b. State the date, which shall not be less than 45 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 15 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;

c. State the specific reason or reasons of the insurer for cancellation or refusal to renew;

d. Advise the *first named* insured of its right to request in writing, within 15 days of the receipt of the notice, that the Commissioner of Insurance review the action of the insurer; and

e. In the case of a policy of motor vehicle insurance, inform the *first named* 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 orally, or in writing, if the insurer requires such notification to be in writing, the insurer or its agent that he wishes the policy to be canceled 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.

3. Nothing in this subsection shall apply if an affiliated insurer has manifested its willingness to provide coverage at a lower premium than would have been charged for the same exposures on the expiring policy. The affiliated insurer shall manifest its willingness to provide coverage by issuing a policy with the types and limits of coverage at least equal to those contained in the expiring policy unless the named insured has requested a change in coverage or limits. When such offer is made by an affiliated insurer, an offer of renewal shall not be required of the insurer of the expiring policy, and the policy issued by the affiliated insurer shall be deemed to be a renewal 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 insurer-initiated increase in the premium greater than 25 percent of (i) a policy of insurance defined in § 38.2-117 or 38.2-118 insuring a business entity; (ii) a policy of insurance that includes as a part thereof insurance defined in § 38.2-117 or 38.2-118 insuring a business entity; (iii) a policy of motor vehicle insurance against legal liability of the insured as defined in § 38.2-124 insuring a business entity; or (iv) a policy of miscellaneous casualty insurance as defined in subsection B of § 38.2-111 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 *first* named insured at the address shown on the policy, or delivers electronically to the address provided by the *first* named insured, a written notice

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59 of such reduction in coverage or premium increase not later than 45 days prior to the effective date of  
60 same. The increase in premium shall be the difference between the renewal premium and the premium  
61 charged by the insurer at the effective date of the expiring policy. Such notice shall:

62 1. Be in a type size authorized under § 38.2-311;

63 2. State the date, which shall not be less than 45 days after the delivery or mailing of the notice of  
64 reduction in coverage or increase in premium, on which such reduction in coverage or increase in  
65 premium shall become effective;

66 3. Advise the *first* named insured of the specific reason for the increase and the amount of the  
67 increase, or, if in the case of a reduction in coverage, the specific reason for the reduction and the  
68 manner in which coverage will be reduced, or that such information may be obtained from the agent or  
69 the insurer;

70 4. Advise the *first named* insured of its right to request in writing, within 15 days of receipt of the  
71 notice, that the Commissioner of Insurance review the action of the insurer.

72 D. If an insurer does not provide notice in the manner required in subsection C, coverage shall  
73 remain in effect until 45 days after written notice of reduction in coverage or increase in premium is  
74 mailed or delivered to the insured at the address shown on the policy, or delivered electronically to the  
75 address provided by the named insured, unless the insured obtains replacement coverage or elects to  
76 cancel sooner in either of which cases coverage under the prior policy shall cease on the effective date  
77 of the replacement coverage or the elected date of cancellation as the case may be. If the insured fails to  
78 accept or rejects the changed policy, coverage for any period that extends beyond the expiration date  
79 will be under the prior policy's rates, terms and conditions as applied against the renewal policy's limits,  
80 rating exposures, and additional coverages. If the insured accepts the changed policy, the reduction in  
81 coverage or increase in premium shall take effect upon the expiration of the prior policy.

82 E. Notice of reduction in coverage or increase in premium shall not be required if:

83 1. The insurer, after written demand, has not received, within 45 days after such demand has been  
84 mailed or delivered to the insured at the address shown on the policy, or delivered electronically to the  
85 address provided by the named insured, sufficient information from the insured to provide the required  
86 notice;

87 2. Such notice is waived in writing by the insured;

88 3. The insurer delivers or mails to the named insured a renewal policy or a renewal offer not less  
89 than 45 days prior to the effective date of the policy or, in the case of a medical malpractice insurance  
90 policy, not less than 90 days prior to the effective date of the policy;

91 4. The policy is issued to a large commercial risk as defined in subsection C of § 38.2-1903.1 but  
92 excluding policies of medical malpractice insurance; or

93 5. The policy is retrospectively rated, where the premium is adjusted at the end of the policy period  
94 to reflect the risk's actual loss experience.

95 F. No written notice of cancellation, refusal to renew, reduction in coverage or increase in premium  
96 that is mailed, or delivered electronically when authorized for a notice other than a notice of  
97 cancellation, by an insurer to an insured in accordance with this section shall be effective unless:

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

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

101 c. At the time of mailing the insurer (i) obtains a written receipt from the United States Postal  
102 Service showing the date of mailing and the number of items mailed and (ii) retains a mailing list  
103 showing the name and address of the insured stated in the policy, or the last known address, to whom  
104 the notices were mailed, together with a signed statement by the insurer that the written receipt from the  
105 United States Postal Service corresponds to the mailing list retained by the insurer, or

106 d. If delivered electronically, the insurer retains evidence of electronic transmittal or receipt of the  
107 notification for at least one year from the date of the transmittal; and

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

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

117 b. Notwithstanding the provisions of subdivision 3 a, if the terms of the policy require the notice of  
118 cancellation, refusal to renew, reduction in coverage or increase in premium to be given to any  
119 lienholder, the insurer and lienholder may agree by separate agreement that such notices may be  
120 transmitted electronically provided that the insurer and lienholder agree upon the specifics for transmittal

and acknowledgement of notification. Evidence of transmittal or receipt of the notification 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 premium 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 A 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 15 days of receipt of the notice of cancellation, refusal to renew, reduction in coverage or increase in premium, 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 premium 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 premium 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 premium increases to which this section applies and copies of every notice or statement required by subsections A, C, F and L 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, or 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 premium increase, for any statement made by any of them in complying with this section or for providing information pertaining thereto.

L. Notwithstanding anything in this section to the contrary, if an insurer cancels or refuses to renew a policy of medical malpractice insurance as defined in § 38.2-2800, or if, as a result of an insurer-initiated increase in premium, the premium increases for a medical malpractice insurance policy by more than 25 percent of the previous policy's premium, the insurer shall provide no fewer than 90 days notice prior to the renewal effective date, or, if such policy is being cancelled or non-renewed for failure of the insured to discharge when due any of its obligations in connection with the payment of premium for the policy, the effective date of cancellation or refusal to renew shall not be less than 15 days from the date of mailing or delivery of the notice. The increase in the premium shall be the difference between the renewal premium and the premium charged by the insurer at the effective date of the expiring policy.

M. As used in this section, an "insurer-initiated increase in premium" means an increase in premium other than one resulting from changes in (i) coverage requested by the insured, (ii) policy limits requested by the insured, (iii) the insured's operation or location that result in a change in the classification of the risk, or (iv) the rating exposures including, but not limited to, increases in payroll, receipts, square footage, number of automobiles insured, or number of employees.