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SENATE BILL NO. 271

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the House Committee on Commerce and Energy
on February 24, 2022)

(Patrons Prior to Substitute—Senators Ebbin and Hashmi [SBs 242 and 244])

A BILL to amend and reenact § 38.2-508 of the Code of Virginia, relating to insurance; discrimination based on status as living organ donor prohibited.

Be it enacted by the General Assembly of Virginia:

1. That § 38.2-508 of the Code of Virginia is amended and reenacted as follows:

§ 38.2-508. Unfair discrimination.

No person shall:

1. Unfairly discriminate or permit any unfair discrimination between individuals of the same class and equal expectation of life (i) in the rates charged for any life insurance or annuity contract, or (ii) in the dividends or other benefits payable on the contract, or (iii) in any other of the terms and conditions of the contract;

2. Unfairly discriminate or permit any unfair discrimination between individuals of the same class and of essentially the same hazard (i) in the amount of premium, policy fees, or rates charged for any policy or contract of accident or health insurance, (ii) in the benefits payable under such policy or contract, (iii) in any of the terms or conditions of such policy or contract, or (iv) in any other manner;

3. Refuse to insure, refuse to continue to insure, or limit the amount, extent or kind of insurance coverage available to an individual, or charge an individual a different rate for the same coverage solely because of blindness, or partial blindness, or mental or physical impairments, unless the refusal, limitation or rate differential is based on sound actuarial principles. This paragraph shall not be interpreted to modify any other provision of law relating to the termination, modification, issuance or renewal of any insurance policy or contract;

4. Unfairly discriminate or permit any unfair discrimination between individuals or risks of the same class and of essentially the same hazards by refusing to issue, refusing to renew, cancelling or limiting the amount of insurance coverage solely because of the geographic location of the individual or risk, unless:

a. The refusal, cancellation or limitation is for a business purpose that is not a mere pretext for unfair discrimination; or

b. The refusal, cancellation or limitation is required by law or regulatory mandate;

5. Make or permit any unfair discrimination between individuals or risks of the same class and of essentially the same hazards by refusing to issue, refusing to renew, cancelling or limiting the amount of insurance coverage on a residential property risk, or the personal property contained in a residential property risk, solely because of the age of the residential property, unless:

a. The refusal, cancellation or limitation is for a business purpose that is not a mere pretext for unfair discrimination; or

b. The refusal, cancellation or limitation is required by law or regulatory mandate;

6. Refuse to issue or renew any individual accident and sickness insurance policy or contract for coverage over and above any lifetime benefit of a group accident and sickness policy or contract solely because an individual is insured under a group accident and sickness insurance policy or contract, provided that medical expenses covered by both individual and group coverage shall be paid first by the group policy or contract to the extent of the group coverage; or

7. Consider the status of a victim of domestic violence as a criterion in any decision with regard to insurance underwriting, pricing, renewal, scope of coverage, or payment of claims on any and all insurance defined in § 38.2-100 and further classified in Article 2 (§ 38.2-101 et seq.) of Chapter 1 of this title, other than (i) legal services plans as provided for in Chapter 44 (§ 38.2-4400 et seq.) of this title and (ii) the insurance classified in §§ 38.2-110 through 38.2-133. The term "domestic violence" means the occurrence of one or more of the following acts by a current or former family member, household member as defined in § 16.1-228, person against whom the victim obtained a protective order or caretaker:

a. Attempting to cause or causing or threatening another person physical harm, severe emotional distress, psychological trauma, rape or sexual assault;

b. Engaging in a course of conduct or repeatedly committing acts toward another person, including following the person without proper authority, under circumstances that place the person in reasonable fear of bodily injury or physical harm;

c. Subjecting another person to false imprisonment; or

d. Attempting to cause or causing damage to property so as to intimidate or attempt to control the

60 behavior of another person.

61 Nothing in this subsection shall prohibit an insurer or insurance professional from asking about a
62 medical condition or from using medical information to underwrite or to carry out its duties under an
63 insurance policy even if the medical information is related to a medical condition that the insurer or
64 insurance professional knows or has reason to know resulted from domestic violence, to the extent
65 otherwise permitted under this section and other applicable law; *or*

66 8. *Refuse to insure, refuse to continue to insure, or limit the amount or extent of life insurance,*
67 *disability insurance, or long-term care insurance coverage available to an individual, or charge an*
68 *individual a different rate for the same coverage based solely and without any additional actuarial risks*
69 *upon the status of such individual as a living organ donor. For the purposes of this subdivision, "living*
70 *organ donor" means a living individual who donates one or more of such individual's human organs,*
71 *including bone marrow, to be medically transplanted into the body of another individual.*