

LD3401298

HOUSE BILL NO. 2563

Offered January 23, 1995

A *BILL to amend and reenact §§ 8.01-66.1, 38.2-2005, 46.2-1529 and 46.2-1530 of the Code of Virginia; to amend the Code of Virginia by adding in Chapter 3 of Title 46.2 an article numbered 17.1, consisting of sections numbered 46.2-482.1 through 46.2-482.5; and to repeal Chapter 30 (§§ 38.2-3000 and 38.2-3001) of Title 38.2 and Article 8 (§§ 46.2-705 through 46.2-710) of Chapter 6 of Title 46.2 of the Code of Virginia, relating to motor vehicles; liability insurance; penalties.*

Patrons—Ingram, Marshall and Wagner

Referred to Committee on Corporations, Insurance and Banking

Be it enacted by the General Assembly of Virginia:

1. That §§ 8.01-66.1, 38.2-2005, 46.2-1529 and 46.2-1530 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding in Chapter 3 of Title 46.2 an article numbered 17.1, consisting of sections 46.2-482.1 through 46.2-482.5, as follows:

§ 8.01-66.1. Remedy for arbitrary refusal of motor vehicle insurance claim.

A. Whenever any insurance company licensed in this Commonwealth to write insurance as defined in § 38.2-124 denies, refuses or fails to pay to its insured a claim of \$1,000 or less in excess of the deductible, if any, under the provisions of a policy of motor vehicle insurance issued by such company to the insured and it is subsequently found by the judge of a court of proper jurisdiction that such denial, refusal or failure to pay was not made in good faith, the company shall be liable to the insured in an amount double the amount otherwise due and payable under the provisions of the insured's policy of motor vehicle insurance, together with reasonable attorney's fees and expenses.

The provisions of this subsection shall be construed to include an insurance company's refusal or failure to pay medical expenses to persons covered under the terms of any medical payments coverage extended under a policy of motor vehicle insurance, when the amount of the claim therefor is \$1,000 or less and the refusal was not made in good faith.

B. Notwithstanding the provisions of subsection A, whenever any insurance company licensed in this Commonwealth to write insurance as defined in § 38.2-124 denies, refuses or fails to pay to a third party claimant, on behalf of an insured to whom such company has issued a policy of motor vehicle liability insurance, a claim of \$1,000 or less made by such third party claimant and if the judge of a court of proper jurisdiction finds that the insured is liable for the claim, the third party claimant shall have a cause of action against the insurance company. If the judge finds that such denial, refusal or failure to pay was not made in good faith, the company, in addition to the liability assumed by the company under the provisions of the insured's policy of motor vehicle liability insurance, shall be liable to the third party claimant in an amount double the amount of the judgment awarded the third party claimant, together with reasonable attorney's fees and expenses.

C. Notwithstanding the provisions of subsections A and B above, whenever any person who has paid a fee to the Department of Motor Vehicles to register an uninsured motor vehicle pursuant to § 46.2-706 or any person who has furnished proof of financial responsibility in lieu of obtaining a policy or policies of motor vehicle liability insurance pursuant to the provisions of Title 46.2 or any person who is required and has failed either to pay such fee or to furnish such proof pursuant to the provisions of Title 46.2 denies, refuses or fails to pay to a claimant a claim of \$1,000 or less made by such claimant as a result of a motor vehicle accident; and if the trial judge of a court of proper jurisdiction finds that such denial, refusal or failure to pay was not made in good faith, such person shall be liable to the claimant in an amount double the amount otherwise due and payable together with reasonable attorney's fees and expenses.

For the purposes of this subsection C "person" shall mean and include any natural person, firm, partnership, association or corporation.

D. 1. Whenever a court of proper jurisdiction finds that an insurance company licensed in this Commonwealth to write insurance as defined in § 38.2-124 denies, refuses or fails to pay to its insured a claim of more than \$1,000 in excess of the deductible, if any, under the provisions of a policy of motor vehicle insurance issued by such company to the insured and it is subsequently found by the judge of a court of proper jurisdiction that such denial, refusal or failure to pay was not made in good faith, the company shall be liable to the insured in the amount otherwise due and payable under the provisions of the insured's policy of motor vehicle insurance, plus interest on the amount due at double the rate provided in § 6.1-330.53 from the date that the claim was submitted to the insurer or its authorized agent, together with reasonable attorney's fees and expenses.

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2. The provisions of this subsection shall be construed to include an insurance company's refusal or failure to pay medical expenses to persons covered under the terms of any medical payments coverage extended under a policy of motor vehicle insurance when the refusal was not made in good faith.

§ 38.2-2005. Provisions governing making of rates.

A. Rates for the classes of insurance to which this chapter applies shall not be excessive, inadequate or unfairly discriminatory. All rates and all changes and amendments to rates to which this chapter applies for use in this Commonwealth shall consider loss experience and other factors within Virginia if relevant and actuarially sound; provided, other data, including countrywide, regional or other state data, may be considered where such data is relevant and where a sound actuarial basis exists for considering data other than Virginia-specific data.

B. 1. In making rates for the classes of insurance to which this chapter applies, separate consideration shall be given to (i) past and prospective loss experience within and outside this Commonwealth, (ii) conflagration or catastrophe hazards, (iii) a reasonable margin for underwriting profit and contingencies, (iv) dividends, savings or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members or subscribers, (v) past and prospective expenses both countrywide and those specifically applicable to this Commonwealth, (vi) investment income earned or realized by insurers from their unearned premium and loss reserve and the Commission may give separate consideration to investment income earned on surplus funds, (vii) the loss reserving practices, standards and procedures utilized by the insurer, and (viii) all other relevant factors within and outside this Commonwealth. When actual experience or data does not exist, the Commission may consider estimates.

2. In the case of fire insurance rates, consideration shall be given to the experience of the fire insurance business during a period of not less than the most recent five-year period for which such experience is available.

3. In the case of uninsured motorist coverage required by subsection A of § 38.2-2206, consideration shall be given to all sums distributed by the Commission from the Uninsured Motorists Fund in accordance with the provisions of Chapter 30 of this title.

C. For the classes of insurance to which this chapter applies (i) the systems of expense provisions included in the rates for use by any insurer or group of insurers may differ from those of other insurers or groups of insurers to reflect the requirements of the operating methods of any such insurer or group for any class of insurance, or for any subdivision or combination of insurance for which separate expense provisions apply, and (ii) risks may be grouped by classifications for the establishment of rates and minimum premiums. Classification rates may be modified to produce rates for individual risks in accordance with rating plans that establish standards for measuring variations in hazards, expense provisions, or both. The standards may measure any difference among risks that can be demonstrated to have a probable effect upon losses or expenses.

D. All rates, rating schedules or rating plans and every manual of classifications, rules and rates, including every modification thereof, approved by the Commission under this chapter, shall be used until a change is approved by the Commission.

Article 17.1.

Financial Responsibility Requirements.

§ 46.2-482.1. *Certificates may be required of applicants for registration; verification of such certificates; suspension of driver's license, registration certificates and license plates for violations.*

Every person applying for registration for a motor vehicle shall, under the penalties set forth in § 46.2-482.3, execute and furnish to the Commissioner his certificate that such motor vehicle is an insured motor vehicle as defined in § 46.2-482.2, or that the Commissioner has issued to the owner thereof, in accordance with the provisions of § 46.2-368, a certificate of self-insurance applicable to the vehicle sought to be registered. The Commissioner, or his duly authorized agent, may require any registered owner of a motor vehicle declared to be insured or any applicant for registration of a motor vehicle declared to be an insured motor vehicle to submit a certificate of insurance on a form prescribed by the Commissioner. The Commissioner shall forward the certificate of insurance or bond to the insurance company or surety company, whichever is applicable, for verification as to whether or not the policy or bond named in the certificate is currently in force. Thereupon and not later than thirty days following receipt of the certificate of insurance, the insurance company or surety company shall cause to be filed with the Commissioner a written notice if the policy or bond was not applicable as to the named insured. The Commissioner shall prescribe the manner in which the written notice shall be made.

The refusal or neglect of any owner to submit, within thirty days, the certificate of insurance when required by the Commissioner or his duly authorized agent, or the notification by the insurance company or surety company that the policy or bond named in the certificate of insurance is not in effect, shall require the Commissioner to suspend any driver's license and all registration certificates and license plates issued to the owner of the motor vehicle until such person shows evidence of having

obtained, as to that motor vehicle, liability insurance of the types and amounts provided in § 46.2-472 or furnishes proof of future financial responsibility in the manner prescribed in Article 15 (§ 46.2-435 et seq.) of Chapter 3 of this title. No order of suspension required by this section shall become effective until the Commissioner has offered the person an opportunity for an administrative hearing to show cause why the order should not be enforced. Notice of the opportunity for an administrative hearing may be included in the order of suspension. When three years have elapsed from the effective date of the suspension herein required, the Commissioner may relieve such person of the requirement of furnishing proof of future financial responsibility.

The Commissioner shall suspend the driver's license and all registration certificates and license plates of any person upon receiving a record of his conviction of a violation of any provisions of § 46.2-482.3, but the Commissioner shall dispense with such suspension when the person is convicted for a violation of § 46.2-482.3 and the Division's records show conclusively (i) that the motor vehicle was insured; or (ii) that the person convicted was only the operator of the vehicle and not the titled owner and that he had not by prearrangement with the titled owner agreed to purchase the vehicle.

§ 46.2-482.2. "Motor vehicle," "insured motor vehicle" and "uninsured motor vehicle" defined.

For purposes of this article, a "motor vehicle" is defined as a vehicle capable of self-propulsion which is required to be titled and licensed and for which a license fee is required to be paid by the owner thereof. As used in this article, the term "insured motor vehicle" means a motor vehicle as to which there is bodily injury liability insurance and property damage liability insurance, both in the amounts specified in § 46.2-472, issued by an insurance carrier authorized to do business in this Commonwealth, or as to which a bond has been given or cash or securities delivered in lieu of such insurance, or as to which the owner has qualified as a self-insurer in accordance with the provisions of § 46.2-368. The term "uninsured motor vehicle" means a motor vehicle as to which there is no such bodily injury liability insurance and property damage liability insurance, or no such bond has been given or cash or securities delivered in lieu thereof, or the owner of which has not so qualified as a self-insurer.

§ 46.2-482.3. Operating uninsured motor vehicle without payment of fee; furnishing certificate of insurance; false evidence of insurance.

Any person owning an uninsured motor vehicle (i) licensed in this Commonwealth, or (ii) subject to registration and license in this Commonwealth, or (iii) displaying temporary license plates provided for in § 46.2-1558 who operates or permits the operation of such motor vehicle shall be guilty of a traffic infraction punishable by a fine of \$250 and incarceration for five days in jail.

The Commissioner, or his duly authorized agent, having good reason to believe that a motor vehicle is operated or has been operated on any specified date, may require the owner of such motor vehicle to submit the certificate of insurance provided for by § 46.2-482.1. The refusal or neglect of the owner to furnish such certificate shall be prima facie evidence that the motor vehicle was an uninsured motor vehicle at the time of such operation.

Any person who presents or causes to be presented to the Commissioner a false certificate that a motor vehicle is an insured motor vehicle, or false evidence that a motor vehicle sought to be registered is an insured motor vehicle, shall be guilty of a traffic infraction punishable by a fine of \$250 and incarceration for five days in jail.

However, the foregoing portions of this section shall not be applicable if it is established that such owner or person had good cause to believe and did believe that such motor vehicle was an insured motor vehicle, in which event the provisions of § 46.2-609 shall be applicable.

Abstracts of records of conviction, as defined in this title, of any violation of any of the provisions of this section shall be forwarded to the Commissioner as prescribed by § 46.2-383.

The Commissioner shall suspend the driver's license and all registration certificates and license plates of any person upon receiving a record of his conviction of a violation of any provisions of this section, and he shall not thereafter reissue the driver's license and the registration certificates and license plates issued in the name of such person until such person has furnished proof of future financial responsibility as prescribed by Article 15 (§ 46.2-435 et seq.) of Chapter 3 of this title. However, when three years have elapsed from the date of the suspension herein required, the Commissioner may relieve such person of the requirement of furnishing proof of future financial responsibility. When such suspension results from a conviction for presenting or causing to be presented to the Commissioner a false certificate as to whether a motor vehicle is an insured motor vehicle or false evidence that any motor vehicle sought to be registered is insured, then the Commissioner shall not thereafter reissue the driver's license and the registration certificates and license plates issued in the name of such person so convicted for a period of 180 days from the date of such order of suspension, and only then when all other provisions of law have been complied with by such person.

§ 46.2-482.4. Suspension of driver's license and registration when uninsured motor vehicle is involved in reportable accident; hearing prior to suspension.

183 When it appears to the Commissioner from the records of his office that an uninsured motor vehicle
184 as defined in § 46.2-482.2, subject to registration in this Commonwealth, is involved in a reportable
185 accident in this Commonwealth resulting in death, injury or property damage, the Commissioner shall,
186 in addition to enforcing the applicable provisions of Article 13 (§ 46.2-417 et seq.) of Chapter 3 of this
187 title, suspend such owner's driver's license and all of his license plates and registration certificates until
188 such person has complied with the provisions of Article 13 (§ 46.2-417 et seq.) of Chapter 3 of this title
189 and furnishes proof of future financial responsibility in the manner prescribed in Article 15 (§ 46.2-435
190 et seq.) of Chapter 3 of this title. However, no order of suspension required by this section shall become
191 effective until the Commissioner has offered the person an opportunity for an administrative hearing to
192 show cause why the order should not be enforced. Notice of the opportunity for an administrative
193 hearing may be included in the order of suspension.

194 However, when three years have elapsed from the date of the suspension herein required, the
195 Commissioner may relieve such person of the requirement of furnishing proof of future financial
196 responsibility. The presentation by a person subject to the provisions of this section of a certificate of
197 insurance, executed by an agent or representative of an insurance company qualified to do business in
198 this Commonwealth, showing that on the date and at the time of the accident the vehicle was an insured
199 motor vehicle as herein defined, shall be sufficient bar to the suspension provided for in this section.

200 § 46.2-482.5. Requiring other proof of financial responsibility; suspended driver's license, registration
201 certificate and license plates to be returned to Commissioner; Commissioner may take possession
202 thereof.

203 Whenever any proof of financial responsibility filed by any person as required by this article no
204 longer fulfills the purpose for which required, the Commissioner shall require other proof of financial
205 responsibility as required by this article and shall suspend such person's driver's license and/or
206 chauffeur's endorsement, registration certificates and license plates and decals pending the furnishing of
207 proof as required.

208 Any person whose driver's license and/or chauffeur's endorsement or registration certificates or
209 license plates and decals have been suspended as provided in this article and have not been reinstated
210 shall immediately return every such license, registration certificate, and set of license plates and decals
211 held by him to the Commissioner. Any person failing to comply with this requirement shall be guilty of
212 a traffic infraction and upon conviction thereof shall be punished as provided in § 46.2-113.

213 The Commissioner is authorized to take possession of any license, registration certificate or set of
214 license plates and decals upon their suspension under the provisions of this article or to direct any
215 police officer to take possession of and return them to the office of the Commissioner.

216 § 46.2-1529. Dealer records.

217 All dealer records regarding employees; lists of vehicles in inventory for sale, resale, or on
218 consignment; vehicle purchases, sales, trades, and transfers of ownership; collections of taxes; titling;
219 ~~uninsured motor vehicle~~, and registration fees; odometer disclosure statements; records of permanent
220 dealer registration plates assigned to the dealer and temporary transport plates and temporary certificates
221 of ownership; and other records required by the Department shall be maintained on the premises of the
222 licensed location. The Commissioner may, on written request by a dealer, permit his records to be
223 maintained at a location other than the premises of the licensed location for good cause shown. All
224 dealer records shall be preserved in original form for a period of five years in a manner that permits
225 systematic retrieval. Certain records may be maintained on a computerized record-keeping system with
226 the prior approval of the Commissioner.

227 § 46.2-1530. Buyer's order.

228 A. Every motor vehicle dealer shall complete, in duplicate, a buyer's order for each sale or exchange
229 of a motor vehicle. A copy of the buyer's order form shall be made available to a prospective buyer
230 during the negotiating phase of a sale and prior to any sales agreement. The completed original shall be
231 retained for a period of four years in accordance with § 46.2-1529, and a duplicate copy shall be
232 delivered to the purchaser at the time of sale or exchange. A buyer's order shall include:

233 1. The name and address of the person to whom the vehicle was sold or traded.

234 2. The date of the sale or trade.

235 3. The name and address of the motor vehicle dealer selling or trading the vehicle.

236 4. The make, model year, vehicle identification number and body style of the vehicle.

237 5. The sale price of the vehicle.

238 6. The amount of any cash deposit made by the buyer.

239 7. A description of any vehicle used as a trade-in and the amount credited the buyer for the trade-in.
240 The description of the trade-in shall be the same as outlined in subdivision 4 of this subsection.

241 8. The amount of any sales and use tax, title fee, ~~uninsured motor vehicle fee~~, registration fee, or
242 other fee required by law for which the buyer is responsible and the dealer has collected. Each tax and
243 fee shall be individually listed and identified.

244 9. The net balance due at settlement.

245 10. Any item designated as "processing fee," and the amount charged by the dealer, if any, for
246 processing the transaction. As used in this section processing includes obtaining title and license plates
247 for the purchaser.

248 11. Any item designated as "dealer's business license tax," and the amount charged by the dealer, if
249 any.

250 12. For sales involving dealer-arranged financing, the following notice, printed in bold type no less
251 than ten-point: "THIS SALE IS CONDITIONED UPON APPROVAL OF YOUR PROPOSED RETAIL
252 INSTALLMENT SALE CONTRACT AS SUBMITTED TO OR THROUGH THE DEALER. IF THAT
253 PROPOSED RETAIL INSTALLMENT SALE CONTRACT IS NOT APPROVED UNDER THE
254 TERMS AGREED TO WITH THE DEALER, YOU MAY CANCEL THIS SALE AND ANY DOWN
255 PAYMENT AND/OR TRADE-IN YOU SUBMITTED WILL BE RETURNED TO YOU, PROVIDED
256 THAT ANY VEHICLE DELIVERED TO YOU BY THE DEALER PURSUANT TO THIS
257 AGREEMENT IS RETURNED TO THE DEALER IN THE SAME CONDITION AS DELIVERED TO
258 YOU, NORMAL WEAR AND TEAR EXCEPTED, WITHIN TWENTY-FOUR HOURS OF WRITTEN
259 OR ORAL NOTICE TO YOU OF THE CREDIT DENIAL."

260 If the transaction does not include a policy of motor vehicle liability insurance, the seller shall stamp
261 or mark on the face of the bill of sale in boldface letters no smaller than eighteen point type the
262 following words: "No Liability Insurance Included."

263 A completed buyer's order when signed by both buyer and seller may constitute a bill of sale.

264 B. The Commissioner shall approve a buyer's order form and each dealer shall file with each license
265 application, or renewal, its buyer's order form, on which the processing fee amount is stated.

266 C. If a processing fee is charged, that fact and the amount of the processing fee shall be disclosed by
267 the dealer. Disclosure shall be by placing a clear and conspicuous sign in the public sales area of the
268 dealership. The sign shall be no smaller than eight and one-half inches by eleven inches and the print
269 shall be no smaller than one-half inch, and in a form as approved by the Commissioner.

270 **2. That Chapter 30 (§§ 38.2-3000 and 38.2-3001) of Title 38.2 and Article 8 (§§ 46.2-705 through**
271 **46.2-710) of Chapter 6 of Title 46.2 of the Code of Virginia are repealed.**

272 **3. Moneys remaining in the Uninsured Motorist Fund on the effective date of this act shall be used**
273 **first to satisfy all claims made against that Fund on or before January 1, 1997, and after that time**
274 **shall revert to the general fund of the state treasury.**