

980487146

## HOUSE BILL NO. 721

Offered January 23, 1998

*A BILL to amend and reenact §§ 38.2-233, 38.2-1921, 38.2-3717, 38.2-3718, 38.2-3719, 38.2-3720, 38.2-3725, 38.2-3726, 38.2-3727, 38.2-3728, 38.2-3730, 38.2-3734, 38.2-3735, and 38.2-3737 of the Code of Virginia, relating to credit insurance.*

Patrons—Cantor, Robinson, Callahan, Deeds, Murphy and Tata

Referred to Committee on Corporations, Insurance and Banking

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 38.2-233, 38.2-1921, 38.2-3717, 38.2-3718, 38.2-3719, 38.2-3720, 38.2-3725, 38.2-3726, 38.2-3727, 38.2-3728, 38.2-3730, 38.2-3734, 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 shall be informed 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 soliciting the application or the creditor's representative 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.

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.

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 A and B of this section and the disclosure requirements set forth in subsections A, B, C and D A and B 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.

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

1. The credit involuntary unemployment insurance policy or certificate shall include a statement printed on the face of the policy or first page of the certificate which clearly describes the limited nature

INTRODUCED

HB721

60 of the insurance. The statement shall be printed in capital letters and in bold twelve-point or larger type;  
61 and

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

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

69 IH. All of the acts necessary to provide and service credit involuntary unemployment insurance may  
70 be performed within the same place of business in which is transacted the business giving rise to where  
71 the debtor entered into the loan or other credit transaction.

72 JI. Subsections A, B, C, D, E and K shall not apply to credit involuntary unemployment insurance  
73 that will insure open end monthly outstanding balance credit transactions if the following criteria are met  
74 If credit involuntary unemployment insurance is offered or applied for on an open-ended credit  
75 transaction by mail, telephone or in a take one brochure, the enrollment request need not be filed for  
76 approval pursuant to subsections A and B of § 38.2-3725 and subsections D and E of this section, need  
77 not comply with this section and need not contain minimum type size provided:

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

82 a. A statement that insurance is optional, voluntary or not required; and

83 b. No questions relating to insurability other than the debtor's age and active employment status;

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

87 a. The name and address of the insurers; and

88 b. A description of the coverage offered including the amount of the coverage, the premium rate for  
89 the insurance offered and any exceptions, limitations or restrictions;

90 3. The creditor makes available only one plan of credit involuntary unemployment insurance to the  
91 debtor; Offers are stated in the enrollment requests or separately, provided that the enrollment requests  
92 make reference to the offers, when the offers are separate;

93 4. The debtor is provided written confirmation of the insurance coverage within thirty sixty days of  
94 the effective date of such coverage. The effective date of such coverage shall begin on the date the  
95 solicitation is accepted; and

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

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

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

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

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

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

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

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

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

120 d. If the disclosures required by subdivision 1 of this subsection are not included in the application  
121 or enrollment request, the application and enrollment request shall make reference to such disclosures

with sufficient information to assist the reader in locating such disclosures within separate solicitation material.

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

§ 38.2-1921. Combination policies.

The Commission may approve for use in this Commonwealth policies or forms for writing at divisible or indivisible rates and premiums any combination of the classes of insurance set forth in subsection A of § 38.2-1902, except insurance on or with respect to operating properties of railroads. The rates and premiums for combination policies, whether divisible or indivisible, shall be subject to this chapter *except as provided in § 38.2-3719*.

§ 38.2-3717. Scope.

All life insurance and all accident and sickness insurance issued or sold in connection with loans or other credit transactions shall be subject to the provisions of this chapter except:

1. Such insurance issued in connection with a loan or other credit transaction of more than ten years duration;

2. Such insurance written in connection with a credit transaction that is:

a. Secured by a first mortgage or deed of trust; and

b. Made to finance the purchase of real property or the construction of a dwelling thereon, or to refinance a prior credit transaction made for such a purpose;

3. Where the issuance of such insurance is an isolated transaction on the part of the insurer not related to an agreement or a plan for insuring debtors of the creditor.

*Policy forms filed with the Commissioner pursuant to § 38.2-3725 and the premium rates approved for use with credit transactions of ten years or less may be used for credit transactions of more than ten years' duration or when secured by a first mortgage or deed of trust.*

§ 38.2-3718. Definitions.

For the purposes of this chapter:

"Commission" means the State Corporation Commission.

"Credit personal property insurance" means insurance covering direct or indirect damage or loss, by fire or other named perils, including those of extended coverage, to the personal property of the borrower all or part of which is the security for the loan, which insurance shall be for an amount and term not to exceed the amount and term of the loan.

"Creditor" means the lender of money or vendor or lessor of goods, services, or property, rights or privileges, for which payment is arranged through a credit transaction, or any successor to the right, title or interest of any such lender, vendor, or lessor and an affiliate, associate or subsidiary of any of them or any other person in any way associated with them.

"Credit transaction" means any transaction by the terms of which the repayment of money loaned or loan commitment made, or payment for goods, services or properties sold or leased is to be made at a future date or dates.

"Critical period coverage" means a death benefit or an accident and sickness insurance benefit in which the benefit is equal to a specified number of monthly payments or the remaining payments on the loan, whichever is less.

"Debtor" means a borrower of money or a purchaser or lessee of goods, services, property, rights or privileges for which payment is arranged through a credit transaction.

"Form" means any policy, contract, rider, endorsement, amendment, certificate, application, enrollment request, or notice of proposed insurance pertaining to credit life insurance or credit accident and sickness insurance. For the purpose of administering §§ 38.2-3726, 38.2-3727 and 38.2-3730, (i) the earned premiums and incurred claims of all credit accident and sickness insurance forms issued in this Commonwealth with the same waiting period will be combined to determine the loss ratio in this Commonwealth regardless of differences in the contractual terms of each form and, (ii) the earned

183 premiums and incurred claims of all credit life insurance forms issued in this Commonwealth will be  
184 combined to determine the loss ratio in this Commonwealth regardless of differences in the contractual  
185 terms or coverage types.

186 "Indebtedness" means the total amount payable by a debtor to a creditor in connection with a loan or  
187 other credit transaction.

188 "*Lump sum disability benefit*" means a single payment equal to the outstanding balance of the loan  
189 on the original date of disability plus accrued interest payable to a debtor after total disability is  
190 established.

191 "Open-end credit" means credit extended under an agreement in which:

192 1. The creditor reasonably contemplates repeated transactions;

193 2. The creditor imposes a finance charge from time to time on an outstanding unpaid balance; and

194 3. The amount of credit that may be extended to the debtor during the term of the agreement (up to  
195 any limit set by the creditor) is generally made available to the extent that any outstanding balance is  
196 repaid.

197 "Truncated coverage" means a credit life insurance benefit or a credit accident and sickness insurance  
198 benefit with a term of insurance coverage that is less than the term of the loan.

199 § 38.2-3719. Forms of credit life insurance and credit accident and sickness insurance.

200 A. Credit life insurance and credit accident and sickness insurance shall be issued only in the  
201 following forms:

202 1. Individual policies of life insurance issued to debtors on the term plan;

203 2. Individual policies of accident and sickness insurance issued to debtors on a term plan or disability  
204 benefit provisions in individual policies of credit life insurance;

205 3. Group policies of life insurance issued to creditors providing insurance upon the lives of debtors  
206 on the term plan;

207 4. Group policies of accident and sickness insurance issued to creditors on a term plan insuring  
208 debtors or disability benefit provisions in group credit life insurance policies to provide such coverage.

209 B. A policy of group credit life insurance or group credit accident and sickness insurance may be  
210 issued to a creditor or its parent holding company or to a trustee, trustees or agent designated by two or  
211 more creditors, which creditor, holding company, affiliate, trustee, trustees or agent shall be deemed the  
212 policyholder, to insure debtors of the creditor or creditors, subject to the following requirements:

213 1. The debtors eligible for insurance under the policy shall be all of the debtors of the creditor or  
214 creditors, or all of any class or classes of the group. The policy may provide that the term "debtors"  
215 shall include (i) borrowers of money or purchasers of goods, services or property for which payment is  
216 arranged through a credit transaction; (ii) the debtors of one or more subsidiary corporations; and (iii)  
217 the debtors of one or more affiliated corporations, proprietors or partnerships if the business of the  
218 policyholder and of such affiliated corporations, proprietors or partnerships is under common control.

219 2. The premium for the policy shall be paid by the policyholder, either from the creditor's funds, or  
220 from charges collected from the insured debtors, or from both. Except as provided in subdivision 3 of  
221 this subsection, a policy on which no part of the premium is to be derived from the collection of such  
222 identifiable charges must insure all eligible debtors.

223 3. Credit life insurance and credit accident and sickness insurance must be offered to all eligible  
224 debtors of a creditor except those for whom evidence of individual insurability is not satisfactory to the  
225 insurer.

226 C. *The individual and group coverages permitted by subsection A may be offered in combination*  
227 *with credit involuntary unemployment insurance, credit personal property insurance, or both, under*  
228 *separate and distinct policies or as a combined policy. Insurers issuing combined coverage in*  
229 *accordance with this section shall not be required to offer the separate and distinct forms comprising*  
230 *the combined coverages for separate purchase. The purchase of insurance coverages combined in*  
231 *accordance with this section shall be voluntary on the part of the debtor.*

232 *Insurance coverages combined in accordance with this section shall not be deemed to be in violation*  
233 *of § 38.2-132 nor § 38.2-1902.*

234 *Notwithstanding the provisions of § 38.2-122.1, credit involuntary unemployment insurance may be*  
235 *issued in combination with other coverages as provided in this section.*

236 § 38.2-3720. Amount of credit life insurance and credit accident and sickness insurance.

237 A. Credit life insurance.

238 1. Where an indebtedness is repayable in substantially equal installments, the amount of credit life  
239 insurance shall at no time exceed the actual amount of unpaid indebtedness.

240 2. Notwithstanding the provisions of subdivision A 1, insurance on agricultural credit transaction  
241 commitments not exceeding one year in duration may be written up to the amount of the loan  
242 commitment, on a nondecreasing or level-term plan.

243 3. Notwithstanding the provisions of subdivision A 1 of this subsection, or any other subsection,  
244 insurance on educational credit transaction commitments may be written for the amount of the loan

commitment.

B. Credit accident and sickness insurance. -

1. The total amount of periodic indemnity payable by credit accident and sickness insurance in the event of disability, as defined in the policy, shall not exceed the aggregate of the periodic scheduled unpaid installments of the indebtedness; and the amount of each periodic indemnity payment shall not exceed the original indebtedness divided by the number of periodic installments, *except in the case of open-end credit plans where the periodic indemnity may be based upon a percentage of the unpaid balance as of the date of disability, not to exceed six percent. The provisions of this subdivision do not preclude the payment of a lump sum benefit in the case of total and permanent disability equal to the equivalent of all future periodic indemnity payments.*

2. *Notwithstanding the provision of subdivision 1, an insurer may provide lump sum disability payments to debtors if a sixty- or ninety-day retroactive accident and sickness insurance premium rate is utilized with open-end credit transactions.*

C. Maximum aggregate provisions. - A provision in a credit life insurance or credit accident and sickness insurance policy or certificate issued thereunder that sets a maximum limit on total benefits payable thereunder shall apply only to that specific indebtedness for which such policy or certificate was issued.

D. The amount of credit life insurance on an indebtedness of any debtor shall not exceed \$70,000 \$225,000 with any one insurance company.

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

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

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

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

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

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

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

D. The benefits provided by any credit life insurance form shall be considered reasonable in relation to the premium charged provided that the rate does not exceed the current prima facie rate set by the Commission. The prima facie rate that shall be effective January 1, 1993, shall be that set forth in § 38.2-3726. Thereafter, effective January 1, ~~1995~~1999, the Commission shall, on a triennial basis, set forth adjusted prima facie rates that will achieve a ~~sixty percent~~ *sixty percent or such lower loss ratio recognizing all of the following factors: actual and expected loss experience, general and administrative expenses, loss settlement and adjustment expenses, reasonable creditor compensation, investment income, the manner in which premiums are charged, and other acquisition costs, reserves, taxes, regulatory license fees and fixed assessments, reasonable insurer profit and other relevant data consistent with generally accepted actuarial standards. The methodology used by the Commission in setting the prima facie rates shall be as set forth in § 38.2-3730.* The prima facie rates shall be provided to insurers no later than September 1 prior to each triennium and shall be effective as to all forms issued on or after January 1 of the following triennium.

E. The benefits provided by any credit accident and sickness insurance form shall be considered reasonable in relation to the premium charged provided that the rate does not exceed the current prima facie rates set by the Commission. The Commission shall set forth adjusted prima facie rates that will achieve a ~~fifty percent~~ *fifty percent or such lower loss ratio recognizing all of the following factors: actual and expected loss experience, general and administrative expenses, loss settlement and adjustment expenses, reasonable creditor compensation, investment income, the manner in which premiums are charged, and other acquisition costs, reserves, taxes, regulatory license fees and fund assessments, reasonable insurer profit and other relevant data consistent with generally accepted actuarial standards.* ~~Thereafter, the~~ The Commission shall, on a triennial basis, set forth adjusted prima facie rates that will achieve a ~~sixty percent~~ *sixty percent or such lower loss ratio.* The methodology used by the Commission in

306 setting the prima facie rates shall be as set forth in ~~§ 38.2-3730~~. The prima facie rates shall be provided  
 307 to insurers no later than September 1, 1992, for the rates to be effective January 1, 1993; September 1,  
 308 1994, for the rates to be effective January 1, 1995; and September 1 prior to each triennium thereafter,  
 309 and shall be effective as to all forms issued on or after such January 1 *of the following triennium*.

310 F. If necessary to assure availability of credit insurance, the Commission may consider other factors  
 311 in order to provide a fair return to insurers.

312 GF. The Commission shall, within thirty days after the filing of any form requiring approval, notify  
 313 the insurer filing the form of the form's approval or disapproval. If a form is disapproved, the  
 314 Commission shall also notify the insurer of its reasons for disapproval. The Commission may extend the  
 315 period within which it shall indicate its approval or disapproval of a form by thirty days. Any form  
 316 received but not approved or disapproved by the Commission shall be deemed approved at the  
 317 expiration of the thirty days, or sixty days if the period is extended. No insurer shall use a form deemed  
 318 approved under the provisions of this section until the insurer has filed with the Commission a written  
 319 notice of its intent to use the form together with a copy of the form and the original transmittal letter  
 320 thereof. The notice shall be filed in the offices of the Commission at least ten days prior to the insurer's  
 321 use of the form.

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

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

328 § 38.2-3726. Credit life insurance rates.

329 A. The benefits provided by any credit life insurance form shall be deemed reasonable in relation to  
 330 the premium charged or to be charged if the rates do not exceed the rates set forth below, ~~except as~~  
 331 ~~such rates are modified pursuant to the requirements of § 38.2-3730:~~

332 1. \$.7519 per month per \$1,000 of outstanding insured indebtedness if premiums are payable on a  
 333 monthly outstanding balance basis.

334 2. \$.48 per \$100 of initial indebtedness repayable in twelve equal monthly installments. If premiums  
 335 are payable on a single premium basis and the amount of the insurance decreases in equal monthly  
 336 amounts, the following formula shall be used to develop single premium rates from the outstanding  
 337 balance rate:

$$\begin{aligned}
 & \text{(n+1)} \\
 & S_p = \frac{\text{-----}}{20 (1 + .0363 n)} \quad O_p \\
 & \text{-----} \\
 & \quad \quad \quad 24
 \end{aligned}$$

348 where  $S_p$  is the single term premium per \$100 of initial insured  
 349 indebtedness,  $n$  is the credit term in months, and  $O_p$  is the monthly  
 350 outstanding balance rate per \$1,000 of outstanding insured  
 351 indebtedness.  
 352  
 353  
 354

356 3. If premiums are payable on a single premium basis when the benefit provided is level term, the  
 357 following formula shall be used to develop single premium rates from the outstanding balance rate:

$$\begin{aligned}
 & n \\
 & S_p = \text{-----} \quad O_p \\
 & \quad \quad \quad 10 (1 + .055 n) \\
 & \text{-----}
 \end{aligned}$$

where  $S_p$  is the single term premium per \$100 of initial insured indebtedness,  $n$  is the credit term in months, and  $O_p$  is the monthly outstanding balance rate per \$1,000 of outstanding insured indebtedness.

4. If the benefits provided are other than those described in the introduction to this subsection, premium rates for such benefits shall be actuarially consistent with the rates provided in the above subdivisions.

5. Joint coverage on any of the bases in this subsection shall not exceed 165 percent of the specific rate for that type of coverage.

B. The premium rates in subsection A shall apply to policies providing credit life insurance to be issued with or without evidence of insurability, to be offered to all debtors, and, except as set forth below, containing: (i) no exclusions other than suicide within six months of the incurred indebtedness; and (ii) age restrictions making ineligible for coverage debtors age seventy or over at the time the indebtedness is incurred or debtors having attained age seventy or over on the maturity date of the indebtedness.

1. Insurance written in connection with an open-end credit plan may provide for the cessation of insurance or a reduction in the amount of insurance upon attainment of an age not less than seventy.

2. On insurance written in connection with closed-end credit plans and open-end credit plans where the amount of insurance is based on or limited to the outstanding unpaid balance, no provision excluding or denying a claim for death resulting from a preexisting condition except for those conditions for which the insured debtor received medical diagnosis or treatment within six months preceding the effective date of coverage and which caused the death of the insured debtor within six months following the effective date of coverage. The effective date of coverage for each part of the insurance attributable to a different advance or charge to the plan account is the date on which the advance or charge is posted to the plan account.

3. At the option of the insurer and in lieu of a preexisting condition exclusion on insurance written in connection with open-end credit where the amount of insurance is based on or limited to the outstanding unpaid balance, a provision limiting the amount of insurance payable on death due to natural causes to the balance as it existed six months prior to the date of death if there have been one or more increases in the outstanding balance during such six-month period and if evidence of insurability has not been required in the six-month period prior to date of death.

§ 38.2-3727. Credit accident and sickness insurance rates.

A. The Commission shall, based on a morbidity study, promulgate seven-, fourteen- ~~and thirty-, thirty-, sixty- and ninety-day~~ retroactive and nonretroactive credit accident and sickness insurance premium rates which will reasonably be expected to produce the loss ratio as required by subsection E of § 38.2-3725. These prima facie rates will be published by the Commission no later than September 1, ~~1992~~1998, and will be effective on or after January 1, ~~1993~~1999. After this date, the premium charged in connection with any credit accident and sickness insurance policy or certificate issued in this Commonwealth may not exceed the then-published prima facie rate as set forth in this section and as may be adjusted pursuant to § ~~38.2-3730~~ 38.2-3725.

The morbidity study shall be based on policies and certificates issued in this Commonwealth for the past three years, the premiums charged for those contracts and the experience produced by those contracts. The Commission may also take into consideration the reserves held on these contracts and the methods used to produce those reserves and any other information which the Commission in its discretion may consider necessary to produce a credible morbidity study.

B. The benefits provided by any credit accident and sickness insurance form shall be deemed reasonable in relation to the premium charged or to be charged if the rates do not exceed the rates initially published by the Commission pursuant to subsection A of this section, except as such rates are modified pursuant to the requirements of § 38.2-3730.

C. If premiums are paid on the basis of a premium rate per month per \$1,000 of outstanding insured indebtedness, they shall be computed according to the following formula or according to a formula approved by the Commission which produces rates actuarially equivalent to the single premium rates:

425 Opn = 20 Spn  
 426 n+1  
 427

428 Where Spn = Single Premium Rate per \$100 of initial insured indebtedness repayable in n equal  
 429 monthly installments.

430 Op = Monthly Outstanding Balance Premium Rate per \$1,000.

431 n = Original repayment period, in months.

432 ~~D. A credit accident and sickness insurance form may not be issued with a waiting period,~~  
 433 ~~retroactive or nonretroactive, which differs from the waiting periods set forth in this section.~~

434 ~~ED.~~ The premium rates in subsection B shall apply to policies providing credit accident and sickness  
 435 insurance to be issued with or without evidence of insurability, to be offered to all eligible debtors, and  
 436 containing:

437 1. No provision excluding or denying a claim for disability resulting from preexisting conditions  
 438 except for those conditions for which the insured debtor received medical advice, diagnosis or treatment  
 439 within six months preceding the effective date of the debtor's coverage and which caused loss within the  
 440 six months following the effective date of coverage. The effective date of coverage for each part of the  
 441 insurance attributable to a different advance or charge to an open-end credit account is the date on  
 442 which the advance or charge is posted to the plan account.

443 2. No other provision which excludes or restricts liability in the event of disability caused in a  
 444 specific manner except that it may contain provisions excluding or restricting coverage in the event of  
 445 normal pregnancy and intentionally self-inflicted injuries.

446 3. No actively-at-work requirement more restrictive than one requiring that the debtor be actively at  
 447 work at a full-time gainful occupation on the effective date of coverage. "Full-time" means a regular  
 448 work week of not less than thirty hours. A debtor shall be deemed to be actively at work if absent from  
 449 work due solely to regular day off, holiday or paid vacation.

450 4. No age restrictions, or only age restrictions making ineligible for coverage debtors sixty-five or  
 451 over at the time the indebtedness is incurred or debtors who will have attained age sixty-six or over on  
 452 the maturity date of the indebtedness.

453 5. A daily benefit equal in amount to one-thirtieth of the monthly benefit payable under the policy  
 454 for the indebtedness.

455 6. A definition of "disability" which provides that during the first twelve months of disability the  
 456 insured shall be unable to perform the duties of his occupation at the time the disability occurred, and  
 457 thereafter the duties of any occupation for which the insured is reasonably fitted by education, training  
 458 or experience.

459 7. A provision written in connection with an open-end credit plan which may provide for the  
 460 cessation of insurance or reduction in the amount of insurance upon attainment of an age not less than  
 461 sixty-five.

462 ~~FE.~~ Joint coverage on any of the bases in this section shall not exceed 165 percent of the rates  
 463 applicable to that type of coverage.

464 § 38.2-3728. Use of rates.

465 A. Use of prima facie rates. An insurer that files rates or has rates on file that are not in excess of  
 466 the prima facie rates set forth in § 38.2-3726 or published as set forth in § 38.2-3727; ~~to the extent~~  
 467 ~~adjusted pursuant to § 38.2-3730,~~ may use those rates without further proof of their reasonableness.

468 B. Use of rates higher than prima facie rates. An insurer may file for approval of and use rates that  
 469 are higher than the prima facie rates set forth in § 38.2-3726 or published as set forth in § 38.2-3727; ~~to~~  
 470 ~~the extent adjusted by § 38.2-3730.~~ In order to use these higher rates, it shall be demonstrated to the  
 471 satisfaction of the Commission that the use of such higher rates will result in a ratio of claims incurred  
 472 to premiums earned (assuming the use of such higher rates) that is not less than the loss ratios as  
 473 required by § 38.2-3725 D and E for those accounts to which such higher rates apply and that such  
 474 upward deviations will not result on a statewide basis for that insurer of a ratio of claims incurred to  
 475 premiums earned of less than the expected loss ratio underlying the current prima facie rate ~~developed~~  
 476 ~~or adjusted pursuant to § 38.2-3730.~~ Deviations effective for 1993 and 1994 1998 and 1999 for credit  
 477 life insurance shall be derived based upon a fifty percent loss ratio.

478 If rates higher than the prima facie rates provided for in §§ 38.2-3726 and 38.2-3727; ~~to the extent~~  
 479 ~~adjusted pursuant to § 38.2-3730,~~ are filed for approval, the filing shall specify the account or accounts  
 480 to which such rates apply. Such rates may be applied on an equitable basis approved by the Commission  
 481 to only one or more accounts specified by the insurer for which the experience has been less favorable  
 482 than expected.

483 C. Approval period of deviated rates.

484 1. A deviated rate will be in effect for a period of time not longer than the experience period used to  
 485 establish such rate. In no event will deviated rates remain in effect after the effective date that new



prima facie rates are effective as set forth in § ~~38.2-3730~~ 38.2-3725.

2. Notwithstanding subsection A of this section, the prima facie rates shall be employed in the event that the account becomes insured by another insurer.

D. As used in this section:

1. "Experience" means "earned premiums" and "incurred claims" during the experience period.

2. "Experience period" means the most recent period of time for which experience is reported, but not for a period longer than three full years.

3. "Incurred ~~Claims~~claims" means total claims paid during the experience period, adjusted for the change in claim reserve.

§ 38.2-3730. Experience reports and adjustment of prima facie rates.

A. Each insurer doing insurance business in this Commonwealth shall annually file with the Commission and the National Association of Insurance Commissioners a report of credit life and credit accident and sickness written on a calendar year basis. Such report shall utilize the Credit Insurance Supplement-Annual Statement Blank as then approved by the National Association of Insurance Commissioners. Such filing shall be made in accordance with and no later than the due date in the Instructions in the Annual Statement.

B. The Commission shall, on a triennial basis, publish notice and conduct a hearing to determine the actual loss ratio for each form of insurance and adjust the prima facie rates, as provided in §§ ~~38.2-3726~~ and ~~38.2-3727~~, by applying the ratio of the actual loss ratio to the loss ratio standard set forth in § ~~38.2-3725~~ to the prima facie rates. The Commission shall, after such hearing, publish the adjusted actual statewide prima facie rates to be used by insurers during the next triennium. As set forth in this section, the following formula shall be used to adjust the prima facie rates:

————— Actual Loss Ratio

————— PFR X —————

————— Loss Ratio Standard

Where PFR is the prima facie rate as provided in §§ ~~38.2-3726~~ and ~~38.2-3727~~, the Actual Loss Ratio is the ratio of the incurred claims to the earned premiums at prima facie rates for all companies for the preceding three years as reported in the Annual Statement Supplements and the Loss Ratio Standard is the loss ratio provided in § ~~38.2-3725~~.

C. In the event that three years of experience is not available using prima facie rates published by the Commission, the Commission may adjust prima facie rates using the number of years of experience available at prima facie rates previously published by the Commission.

§ 38.2-3734. Insurance agent license requirements.

A. Any person who, in this Commonwealth, on behalf of an insurer licensed in this Commonwealth, solicits, negotiates, procures or effects individual or group policies of credit life insurance or credit accident and sickness insurance, shall first apply for and obtain a license from the Commission as either a life and health insurance agent or as a credit life and health insurance agent as defined in § 38.2-1800 of this title, and shall be required to be appointed to represent such insurer in this Commonwealth as set forth in § 38.2-1833.

B. *Notwithstanding subsection A, employees of a creditor or insurer, or of their respective affiliates or related entities, may enroll debtors under a group policy of credit life, credit accident and sickness, credit unemployment or credit property insurance without holding an agent's license provided that no commission is paid to the employee. Enrolling debtors means the process of insuring debtors under a group policy which includes informing the debtor of the availability of coverages, calculating the insurance charge, preparing and delivering the certificate of insurance, answering questions regarding the coverages and assisting the debtor in making an informed decision whether or not credit insurance is to be elected as a part of a credit transaction.*

§ 38.2-3735. Plans of insurance; 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~~ 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

547 difference in premiums charged for a contract wherein the gross indebtedness is insured versus a  
548 contract wherein only the net indebtedness is insured. This disclosure shall include the differences  
549 between the amount financed, the monthly payment and the total charge for each type of insurance. The  
550 form shall be signed and dated by the debtor and the agent soliciting the application or the creditor's  
551 representative soliciting the enrollment request. A copy of this disclosure shall be given to the debtor,  
552 and a copy shall be made a part of the creditor's loan file.

553 B. When elective credit insurance is offered, the borrower must be given written disclosure informed  
554 that purchase of credit insurance is not required and is not a factor in granting credit. The disclosure  
555 shall also include notice that the borrower has the right to use alternative coverage or to buy insurance  
556 elsewhere.

557 C. If the debtor is given a contract which includes a single premium payment to be charged for  
558 elective credit insurance, the debtor must be given:

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

560 2. A disclosure form which shall clearly disclose the difference in premiums charged for a contract  
561 with credit insurance and one without credit insurance. This disclosure shall include the difference  
562 between the amount financed, the monthly payment and the charge for each kind of insurance. The form  
563 shall be signed and dated by the debtor and the agent soliciting the application or the creditor's  
564 representative soliciting the enrollment request. A copy of this disclosure shall be given to the debtor  
565 and a copy shall be made a part of the creditor's loan file. *The offers provided for in subsection A are*  
566 *not required if the debtor is provided information which discloses the cost difference for a contract with*  
567 *credit insurance and one without credit insurance.*

568 D. If credit life insurance or credit accident and sickness insurance is required as security for any  
569 indebtedness, the debtor shall have the option of (i) furnishing the required amount of insurance through  
570 existing policies of insurance owned or controlled by him or (ii) procuring and furnishing the required  
571 coverage through any insurer authorized to transact insurance in this Commonwealth. The creditor shall  
572 inform the debtor of this option in writing and shall obtain the debtor's signature acknowledging that he  
573 understands this option.

574 E. Readability. - The Commission shall not approve any form unless the policy or certificate is  
575 written in nontechnical, readily understandable language, using words of common everyday usage:

576 1. Each insurer is required to test the readability of its policies or certificates by use of the Flesch  
577 Readability Formula, as set forth in Rudolf Flesch, *The Art of Readable Writing* (1949, as revised  
578 1974);

579 2. A total readability score of forty or more on the Flesch score is required; and

580 3. All policies or certificates within the scope of this section shall be filed with the Commission,  
581 accompanied by a certificate setting forth the Flesch score and certifying compliance with the guidelines  
582 set forth in this section.

583 § 38.2-3737. Application.

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

587 B. The application or enrollment request shall be required to *contain the following information if*  
588 *eligibility for coverage is determined by the answers to questions regarding the applicant's health:*

589 1. Contain the name and signature of the agent who solicited the application or enrollment request of  
590 the insurer, the name and age of the debtor, the premium, rate or amount payable by the debtor  
591 separately for credit life insurance and credit accident and sickness insurance, and the type of insurance  
592 coverage provided;

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

598 3. Include the disclosure offer requirements set forth in subsections A, and B, C and D of  
599 § 38.2-3735 unless such requirements have been separately disclosed in another form or forms approved  
600 by the Commission.

601 C. The application or enrollment request form shall be separate and apart from the loan or credit  
602 transaction papers and will refer exclusively to insurance coverage *unless health questions are not asked*  
603 *to determine eligibility and the applicant is enrolled under a group policy by an employee who does not*  
604 *receive a commission. The application or enrollment request may be included in the loan or credit*  
605 *transaction papers in a form as provided for in the Federal Truth in Lending Act and Regulation Z*  
606 *regarding disclosure of credit insurance charges.*

607 D. No individual or group credit life insurance or credit accident and sickness insurance application  
608 form shall contain a question of general good health unless the application form contains appropriate

specific questions concerning the applicant's health history or medical treatment history.

E. Neither this section nor subsection B of § 38.2-3735 shall apply to credit life or credit accident and sickness insurance that will insure open-end monthly outstanding balance credit transactions if the following criteria are met *If credit life insurance and credit accident and sickness insurance are offered or applied for on an open-ended credit transaction by mail, telephone or in a take-one brochure the enrollment request need not be filed for approval pursuant to § 38.2-3725, need not comply with this section nor § 38.2-3735, and need not contain minimum type size provided that:*

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

a. A statement that insurance is optional, voluntary or not required; and  
b. No questions relating to insurability other than the debtor's age and if applicable active employment;

2. The solicitation for the insurance is by mail or telephone. The person making the solicitation shall not condition the future use or continuation of the open-end credit upon the purchase of credit life or credit accident and sickness insurance; *The following items are disclosed:*

a. The name and address of the insurer; and  
b. A description of the coverage offered including the amount of the coverage the premium rate for the insurance offered and any exceptions, limitations or restrictions;

3. The creditor makes available only one plan of credit life insurance and one plan of credit accident and sickness insurance to the debtor *Offers are stated in the enrollment requests or separately, provided that the enrollment requests make reference to the offers;*

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

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

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

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

a. The name and address of the insurer(s) and creditor; and  
b. A description of the coverage offered, including the amount of coverage, the premium rate for each plan of insurance offered, and a description of any exceptions, limitations, or restrictions applicable to such coverage.

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

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

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

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

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

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

670 solicitation materials, has the same form number and wording substantially identical to that contained on  
671 the approved application or enrollment form.

672 G. Notwithstanding the provisions of subsection A, a contract of insurance may be made or  
673 effectuated in connection with a credit transaction between a creditor regulated pursuant to Chapter 4.01  
674 (§ 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,  
675 competent to contract for the insurance and a member of the creditor if:

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

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

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

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