

SENATE BILL NO. _____ HOUSE BILL NO. _____

1 A BILL to amend and reenact §§ 38.2-231, 38.2-2113, 38.2-2114, 38.2-2208 and 38.2-2212 of the Code
2 of Virginia and to amend the Code of Virginia by adding in Chapter 3 of Title 38.2 a section
3 numbered 38.2-325, relating to the provision of certain insurance notices by electronic
4 transmission.

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

6 **1. That §§ 38.2-231, 38.2-2113, 38.2-2114, 38.2-2208 and 38.2-2212 of the Code of Virginia are**
7 **amended and reenacted and that the Code of Virginia is amended by adding in Chapter 3 of Title**
8 **38.2 a section numbered 38.2-325 as follows:**

9 § 38.2-231. Notice of cancellation, refusal to renew, reduction in coverage or increase in
10 premium of certain liability insurance policies.

11 A. 1. No cancellation or refusal to renew by an insurer of (i) a policy of insurance as defined in §
12 38.2-117 or 38.2-118 insuring a business entity; (ii) a policy of insurance that includes as a part thereof
13 insurance as defined in § 38.2-117 or 38.2-118 insuring a business entity; (iii) a policy of motor vehicle
14 insurance against legal liability of the insured as defined in § 38.2-124 insuring a business entity; or (iv)
15 a policy of miscellaneous casualty insurance as defined in subsection B of § 38.2-111 insuring a
16 business entity, shall be effective unless the insurer delivers or mails to the named insured at the address
17 shown on the policy, or delivers electronically to the address provided by the named insured, a written
18 notice of cancellation or refusal to renew. Such notice shall:

- 19 a. Be in a type size authorized under § 38.2-311;
- 20 b. State the date, which shall not be less than 45 days after the delivery or mailing of the notice
21 of cancellation or refusal to renew, on which such cancellation or refusal to renew shall become
22 effective, except that such effective date may not be less than 15 days from the date of mailing or
23 delivery when the policy is being cancelled or not renewed for failure of the insured to discharge when
24 due any of its obligations in connection with the payment of premium for the policy;

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

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

28 e. In the case of a policy of motor vehicle insurance, inform the insured of the possible
29 availability of other insurance which may be obtained through its agent, through another insurer, or
30 through the Virginia Automobile Insurance Plan.

31 2. Nothing in this subsection shall apply to any policy of insurance if the named insured or his
32 duly constituted attorney-in-fact has notified orally, or in writing, if the insurer requires such notification
33 to be in writing, the insurer or its agent that he wishes the policy to be canceled or that he does not wish
34 the policy to be renewed, or if, prior to the date of expiration, he fails to accept the offer of the insurer to
35 renew the policy.

36 B. No insurer shall cancel or refuse to renew a policy of motor vehicle insurance against legal
37 liability of the insured as defined in § 38.2-124 insuring a business entity solely because of lack of
38 supporting business or lack of the potential for acquiring such business.

39 C. No reduction in coverage for personal injury or property damage liability initiated by an
40 insurer and no insurer-initiated increase in the premium greater than 25 percent of (i) a policy of
41 insurance defined in § 38.2-117 or 38.2-118 insuring a business entity; (ii) a policy of insurance that
42 includes as a part thereof insurance defined in § 38.2-117 or 38.2-118 insuring a business entity; (iii) a
43 policy of motor vehicle insurance against legal liability of the insured as defined in § 38.2-124 insuring a
44 business entity; or (iv) a policy of miscellaneous casualty insurance as defined in subsection B of § 38.2-
45 111 insuring a business entity, and which in the case of a reduction in coverage is subject to § 38.2-
46 1912, shall be effective unless the insurer delivers or mails to the named insured at the address shown on
47 the policy, or delivers electronically to the address provided by the named insured, a written notice of
48 such reduction in coverage or premium increase not later than 45 days prior to the effective date of
49 same. The increase in premium shall be the difference between the renewal premium and the premium
50 charged by the insurer at the effective date of the expiring policy. Such notice shall:

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

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

55 3. Advise the named insured of the specific reason for the increase and the amount of the
56 increase, or, if in the case of a reduction in coverage, the specific reason for the reduction and the
57 manner in which coverage will be reduced, or that such information may be obtained from the agent or
58 the insurer;

59 4. Advise the insured of its right to request in writing, within 15 days of receipt of the notice, that
60 the Commissioner of Insurance review the action of the insurer.

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

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

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

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

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

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

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

84 F. No written notice of cancellation, refusal to renew, reduction in coverage or increase in
85 premium that is mailed or delivered electronically by an insurer to an insured in accordance with this
86 section shall be effective unless:

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

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

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

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

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

99 3. a. If the terms of a policy of motor vehicle insurance insuring a business entity require the
100 notice of cancellation, refusal to renew, reduction in coverage or increase in premium to be given to any
101 lienholder, then the insurer shall mail such notice and retain a copy of the notice in the manner required
102 by this subsection. If the notices sent to the insured and the lienholder are part of the same form, the
103 insurer may retain a single copy of the notice. The registered, certified or regular mail postal receipt and

104 the copy of the notices required by this subsection shall be retained by the insurer for at least one year
105 from the date of termination.

106 b. Notwithstanding the provisions of subdivision 3 a, if the terms of the policy require the notice
107 of cancellation, refusal to renew, reduction in coverage or increase in premium to be given to any
108 lienholder, the insurer and lienholder may agree by separate agreement that such notices may be
109 transmitted electronically provided that the insurer and lienholder agree upon the specifics for
110 transmittal and acknowledgement of notification. Evidence of transmittal or receipt of the notification
111 required by this subsection shall be retained by the insurer for at least one year from the date of
112 termination.

113 4. Copy, as used in this subsection, shall include photographs, microphotographs, photostats,
114 microfilm, microcard, printouts or other reproductions of electronically stored data, or copies from
115 optical disks, electronically transmitted facsimiles, or any other reproduction of an original from a
116 process which forms a durable medium for its recording, storing, and reproducing.

117 G. Nothing in this section shall prohibit any insurer or agent from including in a notice of
118 cancellation, refusal to renew, reduction in coverage or premium increase any additional disclosure
119 statements required by state or federal laws.

120 H. For the purpose of this section the terms (i) "business entity" shall mean an entity as defined
121 by subsection A of § 13.1-543, § 13.1-603 or 13.1-803 and shall include an individual, a partnership, an
122 unincorporated association, the Commonwealth, a county, city, town, or an authority, board,
123 commission, sanitation, soil and water, planning or other district, public service corporation owned,
124 operated or controlled by the Commonwealth, a locality or other local governmental authority; (ii)
125 "policy of motor vehicle insurance" shall mean a policy or contract for bodily injury or property damage
126 liability insuring a business entity issued or delivered in this Commonwealth covering liability arising
127 from the ownership, maintenance, or use of any motor vehicle, but does not include (a) any policy issued
128 through the Virginia Automobile Insurance Plan, (b) any policy providing insurance only on an excess
129 basis, or (c) any other contract providing insurance to the named insured even though the contract may
130 incidentally provide insurance on motor vehicles; and (iii) "reduction in coverage" shall mean, but not

131 be limited to, any diminution in scope of coverage, decrease in limits of liability, addition of exclusions,
132 increase in deductibles, or reduction in the policy term or duration except a reduction in coverage filed
133 with and approved by the Commission and applicable to an entire line, classification or subclassification
134 of insurance.

135 I. Within 15 days of receipt of the notice of cancellation, refusal to renew, reduction in coverage
136 or increase in premium, the insured shall be entitled to request in writing to the Commissioner that he
137 review the action of the insurer. Upon receipt of the request, the Commissioner shall promptly begin a
138 review to determine whether the insurer's notice of cancellation, refusal to renew, reduction in coverage
139 or premium increase complies with the requirements of this section. Where the Commissioner finds
140 from the review that the notice of cancellation, refusal to renew, reduction in coverage or premium
141 increase does not comply with the requirements of this section, he shall immediately notify the insurer,
142 the insured and any other person to whom such notice was required to be given by the terms of the
143 policy that such notice is not effective. Nothing in this section authorizes the Commissioner to substitute
144 his judgment as to underwriting for that of the insurer. Pending review by the Commission, this section
145 shall not operate to relieve an insured from the obligation to pay any premium when due; however, if the
146 Commission finds that the notice required by this section was not proper, the Commission may order the
147 insurer to pay to the insured any overpayment of premium made by the insured.

148 J. Every insurer shall maintain for at least one year records of cancellation, refusals to renew,
149 reductions in coverage and premium increases to which this section applies and copies of every notice or
150 statement required by subsections A, C, F and L of this section that it sends to any of its insureds.

151 K. There shall be no liability on the part of and no cause of action of any nature shall arise
152 against (i) the Commissioner of Insurance or his subordinates; (ii) any insurer, its authorized
153 representative, its agents, or its employees; or (iii) any firm, person or corporation furnishing to the
154 insurer information as to reasons for cancellation, refusal to renew, reduction in coverage or premium
155 increase, for any statement made by any of them in complying with this section or for providing
156 information pertaining thereto.

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

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

172 § 38.2-325. Electronic delivery.

173 When parties have agreed to conduct business by electronic means, any information that is
 174 required to be delivered in writing may be delivered by (i) placing such information within the body of
 175 the electronic message; (ii) placing such information as an attachment to the electronic message that
 176 may be opened through the use of software that is readily available; (iii) displaying the information, or a
 177 clear and conspicuous link to the information, as an essential step to completing the transaction to which
 178 the information relates; or (iv) placing such information on the insurer's secured server and an electronic
 179 message is provided advising that insurance information or, when appropriate, time-sensitive insurance
 180 information has been placed on the insurer's secured server and is available for retrieval. This section
 181 should be construed to be consistent with the Electronic Signatures in Global and National Commerce
 182 Act (15 U.S.C. § 7001 et seq.).

184 38.2-2113. Mailing or electronic delivery of notice of cancellation or refusal to renew.

185 A. No written notice of cancellation or refusal to renew a policy written to insure owner-
186 occupied dwellings shall be effective when mailed or delivered electronically by an insurer unless:

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

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

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

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

197 2. The insurer retains a copy of the notice of cancellation or refusal to renew.

198 3. [Repealed.]

199 B. This section shall not apply to policies written through the Virginia Property Insurance
200 Association or any other residual market facility established pursuant to Chapter 27 (38.2-2700 et seq.)
201 of this title.

202 C. 1. If the terms of the policy require the notice of cancellation or refusal to renew to be given
203 to any lienholder, then the insurer shall mail such notice and retain a copy of the notice in the manner
204 required by subsection A of this section. If the notices sent to the insured and the lienholder are part of
205 the same form, the insurer may retain a single copy of the notice. The registered, certified or regular
206 mail postal receipt and copy of the notices required by this section shall be retained by the insurer for at
207 least one year from the date of termination.

208 2. Notwithstanding the provisions of subdivision C 1, if the terms of the policy require the notice
209 of cancellation or refusal to renew to be given to any lienholder, the insurer and lienholder may agree by
210 separate agreement that such notices may be transmitted electronically provided that the insurer and
211 lienholder agree upon the specifics for transmittal and acknowledgement of notification. Evidence of

212 transmittal or receipt of the notification required by this subsection shall be retained by the insurer for at
213 least one year from the date of termination.

214 D. Copy, as used in this section, shall include photographs, microphotographs, photostats,
215 microfilm, microcard, printouts or other reproductions of electronically stored data or copies from
216 optical disks, electronically transmitted facsimiles, or any other reproduction of an original from a
217 process which forms a durable medium for its recording, storing, and reproducing.

218 § 38.2-2114. Grounds and procedure for termination of policy; contents of notice; review by
219 Commissioner; exceptions; immunity from liability.

220 A. Notwithstanding the provisions of § 38.2-2105, no policy or contract written to insure owner-
221 occupied dwellings shall be canceled by an insurer unless written notice is mailed or delivered to the
222 named insured at the address stated in the policy, or is delivered electronically to the address provided
223 by the named insured, and cancellation is for one of the following reasons:

- 224 1. Failure to pay the premium when due;
- 225 2. Conviction of a crime arising out of acts increasing the probability that a peril insured against
226 will occur;
- 227 3. Discovery of fraud or material misrepresentation;
- 228 4. Willful or reckless acts or omissions increasing the probability that a peril insured against will
229 occur as determined from a physical inspection of the insured premises; or
- 230 5. Physical changes in the property which result in the property becoming uninsurable as
231 determined from a physical inspection of the insured premises.

232 B. No policy or contract written to insure owner-occupied dwellings shall be terminated by an
233 insurer by refusal to renew except at the expiration of the stated policy period or term and unless the
234 insurer or its agent acting on behalf of the insurer mails or delivers to the named insured, at the address
235 stated in the policy, or delivers electronically to the address provided by the named insured, written
236 notice of the insurer's refusal to renew the policy or contract.

237 C. A written notice of cancellation of or refusal to renew a policy or contract written to insure
238 owner-occupied dwellings shall:

239 1. State the date that the insurer proposes to terminate the policy or contract, which shall be at
240 least 30 days after mailing or delivering to the named insured the notice of cancellation or refusal to
241 renew. However, when the policy is being terminated for the reason set forth in subdivision 1 of
242 subsection A of this section, the date that the insurer proposes to terminate the policy may be less than
243 30 days but at least 10 days from the date of mailing or delivery;

244 2. State the specific reason for terminating the policy or contract and provide for the notification
245 required by the provisions of §§ 38.2-608 and 38.2-609 and subsection B of § 38.2-610. However, those
246 notification requirements shall not apply when the policy is being canceled or not renewed for the reason
247 set forth in subdivision 1 of subsection A of this section;

248 3. Advise the insured that within 10 days of receipt of the notice of termination he may request in
249 writing that the Commissioner review the action of the insurer in terminating the policy or contract;

250 4. Advise the insured of his possible eligibility for fire insurance coverage through the Virginia
251 Property Insurance Association; and

252 5. Be in a type size authorized by § 38.2-311.

253 D. Within 10 days of receipt of the notice of termination any insured or his attorney shall be
254 entitled to request in writing to the Commissioner that he review the action of the insurer in terminating
255 a policy or contract written to insure owner-occupied dwellings. Upon receipt of the request, the
256 Commissioner shall promptly initiate a review to determine whether the insurer's cancellation or refusal
257 to renew complies with the requirements of this section and of § 38.2-2113, if sent by mail or delivered
258 electronically. The policy shall remain in full force and effect during the pendency of the review by the
259 Commissioner except where the cancellation or refusal to renew is for reason of nonpayment of
260 premium, in which case the policy shall terminate as of the date stated in the notice. Where the
261 Commissioner finds from the review that the cancellation or refusal to renew has not complied with the
262 requirements of this section or of § 38.2-2113, if sent by mail or delivered electronically, he shall
263 immediately notify the insurer, the insured, and any other person to whom notice of cancellation or
264 refusal to renew was required to be given by the terms of the policy that the cancellation or refusal to

265 renew is not effective. Nothing in this section authorizes the Commissioner to substitute his judgment as
266 to underwriting for that of the insurer.

267 E. Nothing in this section shall apply:

268 1. To any policy written to insure owner-occupied dwellings that has been in effect for less than
269 90 days when the notice of termination is mailed or delivered to the insured, unless it is a renewal
270 policy;

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

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

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

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

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

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

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

295 1. Age;

296 2. Sex;

297 3. Residence;

298 4. Race;

299 5. Color;

300 6. Creed;

301 7. National origin;

302 8. Ancestry;

303 9. Marital status;

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

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

312 12. Any claim resulting primarily from natural causes;

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

315 14. Any inquiry from an insured about his insurance coverage or policy provisions. For purposes
316 of this subdivision, "inquiry" means a written or oral communication by an insured seeking information

317 regarding coverage or policy provisions that does not notify the insurer of a loss, incident or accident,
 318 and that does not provide information indicating an increase in the hazard insured against. An insurer
 319 shall not report any inquiry as a claim to a loss history database maintained by a consumer reporting
 320 agency or insurance support organization.

321 Nothing in this section prohibits any insurer from setting rates in accordance with relevant
 322 actuarial data.

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

326 § 38.2-2208. Notices of cancellation of or refusal to renew motor vehicle insurance policies.

327 A. No written notice of cancellation or refusal to renew that is mailed or delivered electronically
 328 by an insurer to an insured in accordance with the provisions of a motor vehicle insurance policy shall
 329 be effective unless:

330 1. a. It is sent by registered or certified mail,
 331 b. At the time of mailing the insurer obtains a written receipt from the United States Postal
 332 Service showing the name and address of the insured stated in the policy, ~~or~~

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

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

340 2. The insurer retains a copy of the notice of cancellation or refusal to renew.

341 3. [Repealed.]

342 B. 1. If the terms of the policy require the notice of cancellation or refusal to renew to be given to
 343 any lienholder, then the insurer shall mail such notice and retain a copy of the notice in the manner

344 required by subsection A of this section. If the notices sent to the insured and the lienholder are part of
345 the same form, the insurer may retain a single copy of the notice. The registered, certified or regular
346 mail postal receipt and the copy of the notices required by this section shall be retained by the insurer for
347 at least one year from the date of termination.

348 2. Notwithstanding the provisions of subdivision B 1, if the terms of the policy require the notice
349 of cancellation or refusal to renew to be given to any lienholder, the insurer and lienholder may agree by
350 separate agreement that such notices may be transmitted electronically provided that the insurer and
351 lienholder agree upon the specifics for transmittal and acknowledgement of notification. Evidence of
352 transmittal or receipt of the notification required by this subsection shall be retained by the insurer for at
353 least one year from the date of termination.

354 C. Copy, as used in this section, shall include photographs, microphotographs, photostats,
355 microfilm, microcard, printouts or other reproductions of electronically stored data, or copies from
356 optical disks, electronically transmitted facsimiles, or any other reproduction of an original from a
357 process which forms a durable medium for its recording, storing, and reproducing.

358 § 38.2-2212. Grounds and procedure for cancellation of or refusal to renew motor vehicle
359 insurance policies; review by Commissioner.

360 A. The following definitions shall apply to this section:

361 "Cancellation" or "to cancel" means a termination of a policy during the policy period.

362 "Insurer" means any insurance company, association, or exchange licensed to transact motor
363 vehicle insurance in this Commonwealth.

364 "Policy of motor vehicle insurance" or "policy" means a policy or contract for bodily injury or
365 property damage liability insurance issued or delivered in this Commonwealth covering liability arising
366 from the ownership, maintenance, or use of any motor vehicle, insuring as the named insured one
367 individual or husband and wife who are residents of the same household, and under which the insured
368 vehicle designated in the policy is either:

369 a. A motor vehicle of a private passenger, station wagon, or motorcycle type that is not used
370 commercially, rented to others, or used as a public or livery conveyance where the term "public or livery
371 conveyance" does not include car pools, or

372 b. Any other four-wheel motor vehicle which is not used in the occupation, profession, or
373 business, other than farming, of the insured, or as a public or livery conveyance, or rented to others. The
374 term "policy of motor vehicle insurance" or "policy" does not include (i) any policy issued through the
375 Virginia Automobile Insurance Plan, (ii) any policy covering the operation of a garage, sales agency,
376 repair shop, service station, or public parking place, (iii) any policy providing insurance only on an
377 excess basis, or (iv) any other contract providing insurance to the named insured even though the
378 contract may incidentally provide insurance on motor vehicles.

379 "Renewal" or "to renew" means (i) the issuance and delivery by an insurer of a policy
380 superseding at the end of the policy period a policy previously issued and delivered by the same insurer,
381 providing types and limits of coverage at least equal to those contained in the policy being superseded,
382 or (ii) the issuance and delivery of a certificate or notice extending the term of a policy beyond its policy
383 period or term with types and limits of coverage at least equal to those contained in the policy. Each
384 renewal shall conform with the requirements of the manual rules and rating program currently filed by
385 the insurer with the Commission. Except as provided in subsection K of this section, any policy with a
386 policy period or term of less than 12 months or any policy with no fixed expiration date shall for the
387 purpose of this section be considered as if written for successive policy periods or terms of six months
388 from the original effective date.

389 B. This section shall apply only to that portion of a policy of motor vehicle insurance providing
390 the coverage required by §§ 38.2-2204, 38.2-2205 and 38.2-2206.

391 C. 1. No insurer shall refuse to renew a motor vehicle insurance policy solely because of any one
392 or more of the following factors:

393 a. Age;

394 b. Sex;

395 c. Residence;

- 396 d. Race;
- 397 e. Color;
- 398 f. Creed;
- 399 g. National origin;
- 400 h. Ancestry;
- 401 i. Marital status;
- 402 j. Lawful occupation, including the military service;
- 403 k. Lack of driving experience, or number of years driving experience;
- 404 l. Lack of supporting business or lack of the potential for acquiring such business;
- 405 m. One or more accidents or violations that occurred more than 48 months immediately
- 406 preceding the upcoming anniversary date;
- 407 n. One or more claims submitted under the uninsured motorists coverage of the policy where the
- 408 uninsured motorist is known or there is physical evidence of contact;
- 409 o. A single claim by a single insured submitted under the medical expense coverage due to an
- 410 accident for which the insured was neither wholly nor partially at fault;
- 411 p. One or more claims submitted under the comprehensive or towing coverages. However,
- 412 nothing in this section shall prohibit an insurer from modifying or refusing to renew the comprehensive
- 413 or towing coverages at the time of renewal of the policy on the basis of one or more claims submitted by
- 414 an insured under those coverages, provided that the insurer shall mail or deliver to the insured at the
- 415 address shown in the policy, or deliver electronically to the address provided by the named insured,
- 416 written notice of any such change in coverage at least 45 days prior to the renewal;
- 417 q. Two or fewer motor vehicle accidents within a three-year period unless the accident was
- 418 caused either wholly or partially by the named insured, a resident of the same household, or other
- 419 customary operator;
- 420 r. Credit information contained in a "consumer report," as defined in the federal Fair Credit
- 421 Reporting Act, 15 U.S.C. § 1681 et seq., bearing on a natural person's creditworthiness, credit standing
- 422 or credit capacity. If credit information is used, in part, as the basis for the nonrenewal, such credit

423 information shall be based on a consumer report procured within 120 days from the effective date of the
424 nonrenewal. The provisions of this subdivision shall apply only to insurance purchased primarily for
425 personal, family, or household purposes; or

426 s. The refusal of a motor vehicle owner as defined in § 46.2-1088.6 to provide access to recorded
427 data from a recording device as defined in § 46.2-1088.6.

428 2. Nothing in this section shall require any insurer to renew a policy for an insured where the
429 insured's occupation has changed so as to materially increase the risk. Nothing contained in subdivisions
430 C 1 n, 1 o and 1 p of this subsection shall prohibit an insurer from refusing to renew a policy where a
431 claim is false or fraudulent. Nothing in this section prohibits any insurer from setting rates in accordance
432 with relevant actuarial data.

433 D. No insurer shall cancel a policy except for one or more of the following reasons:

434 1. The named insured or any other operator who either resides in the same household or
435 customarily operates a motor vehicle insured under the policy has had his driver's license suspended or
436 revoked during the policy period or, if the policy is a renewal, during its policy period or the 90 days
437 immediately preceding the last effective date.

438 2. The named insured fails to pay the premium for the policy or any installment of the premium,
439 whether payable to the insurer or its agent either directly or indirectly under any premium finance plan
440 or extension of credit.

441 3. The named insured or his duly constituted attorney-in-fact has notified the insurer of a change
442 in the insured's legal residence to a state other than Virginia and the insured vehicle will be principally
443 garaged in the new state of legal residence.

444 E. No cancellation or refusal to renew by an insurer of a policy of motor vehicle insurance shall
445 be effective unless the insurer delivers or mails to the named insured at the address shown in the policy,
446 or delivers electronically to the address provided by the named insured, a written notice of the
447 cancellation or refusal to renew. The notice shall:

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

449 2. State the effective date of the cancellation or refusal to renew. The effective date of
450 cancellation or refusal to renew shall be at least 45 days after mailing or delivering to the insured the
451 notice of cancellation or notice of refusal to renew. However, when the policy is being canceled or not
452 renewed for the reason set forth in subdivision 2 of subsection D of this section the effective date may
453 be less than 45 days but at least 15 days from the date of mailing or delivery.

454 3. State the specific reason of the insurer for cancellation or refusal to renew and provide for the
455 notification required by §§ 38.2-608, 38.2-609, and subsection B of § 38.2-610. However, those
456 notification requirements shall not apply when the policy is being canceled or not renewed for the reason
457 set forth in subdivision 2 of subsection D of this section.

458 4. Inform the insured of his right to request in writing within 15 days of the receipt of the notice
459 that the Commissioner review the action of the insurer.

460 The notice of cancellation or refusal to renew shall contain the following statement to inform the
461 insured of such right:

462 **IMPORTANT NOTICE**

463 Within 15 days of receiving this notice, you or your attorney may request in writing that the
464 Commissioner of Insurance review this action to determine whether the insurer has complied with
465 Virginia laws in canceling or nonrenewing your policy. If this insurer has failed to comply with the
466 cancellation or nonrenewal laws, the Commissioner may require that your policy be reinstated.
467 However, the Commissioner is prohibited from making underwriting judgments. If this insurer has
468 complied with the cancellation or nonrenewal laws, the Commissioner does not have the authority to
469 overturn this action.

470 5. Inform the insured of the possible availability of other insurance which may be obtained
471 through his agent, through another insurer, or through the Virginia Automobile Insurance Plan.

472 6. If sent by mail [or delivered electronically](#), comply with the provisions of § 38.2-2208.

473 Nothing in this subsection prohibits any insurer or agent from including in the notice of
474 cancellation or refusal to renew, any additional disclosure statements required by state or federal laws,
475 or any additional information relating to the availability of other insurance.

476 F. Nothing in this section shall apply:

477 1. If the insurer or its agent acting on behalf of the insurer has manifested its willingness to
478 renew by issuing or offering to issue a renewal policy, certificate, or other evidence of renewal, or has
479 manifested its willingness to renew in writing to the insured. The written manifestation shall include the
480 name of a proposed insurer, the expiration date of the policy, the type of insurance coverage, and
481 information regarding the estimated renewal premium. The insurer shall retain a copy of each written
482 manifestation for a period of at least one year from the expiration date of any policy that is not renewed;

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

487 3. To any motor vehicle insurance policy which has been in effect less than 60 days when the
488 termination notice is mailed or delivered to the insured, unless it is a renewal policy.

489 G. There shall be no liability on the part of and no cause of action of any nature shall arise
490 against the Commissioner or his subordinates; any insurer, its authorized representatives, its agents, or
491 its employees; or any person furnishing to the insurer information as to reasons for cancellation or
492 refusal to renew, for any statement made by any of them in complying with this section or for providing
493 information pertaining to the cancellation or refusal to renew. For the purposes of this section, no insurer
494 shall be required to furnish a notice of cancellation or refusal to renew to anyone other than the named
495 insured, any person designated by the named insured, or any other person to whom such notice is
496 required to be given by the terms of the policy and the Commissioner.

497 H. Within 15 days of receipt of the notice of cancellation or refusal to renew, any insured or his
498 attorney shall be entitled to request in writing to the Commissioner that he review the action of the
499 insurer in canceling or refusing to renew the policy of the insured. Upon receipt of the request, the
500 Commissioner shall promptly begin a review to determine whether the insurer's cancellation or refusal
501 to renew complies with the requirements of this section and of § 38.2-2208 if the notice was sent by mail
502 or delivered electronically. The policy shall remain in full force and effect during the pendency of the

503 review by the Commissioner except where the cancellation or refusal to renew is for the reason set forth
504 in subdivision 2 of subsection D of this section, in which case the policy shall terminate as of the
505 effective date stated in the notice. Where the Commissioner finds from the review that the cancellation
506 or refusal to renew has not complied with the requirements of this section or of § 38.2-2208, he shall
507 immediately notify the insurer, the insured and any other person to whom such notice was required to be
508 given by the terms of the policy that the cancellation or refusal to renew is not effective. Nothing in this
509 section authorizes the Commissioner to substitute his judgment as to underwriting for that of the insurer.
510 Where the Commissioner finds in favor of the insured, the Commission in its discretion may award the
511 insured reasonable attorneys' fees.

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

515 J. The provisions of this section shall not apply to any insurer that limits the issuance of policies
516 of motor vehicle liability insurance to one class or group of persons engaged in any one particular
517 profession, trade, occupation, or business. Nothing in this section requires an insurer to renew a policy
518 of motor vehicle insurance if the insured does not conform to the occupational or membership
519 requirements of an insurer who limits its writings to an occupation or membership of an organization.
520 No insurer is required to renew a policy if the insured becomes a nonresident of Virginia.

521 K. Notwithstanding any other provision of this section, a motor vehicle insurance policy with a
522 policy period or term of five months or less may expire at its expiration date when the insurer has
523 manifested in writing its willingness to renew the policy for at least 30 days and has mailed or delivered
524 the written manifestation to the insured at least 15 days before the expiration date of the policy. The
525 written manifestation shall include the name of the proposed insurer, the expiration date of the policy,
526 the type of insurance coverage, and the estimated renewal premium. The insurer shall retain a copy of
527 the written manifestation for at least one year from the expiration date of any policy that is not renewed.

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