Letter Withdrawn By Administrative Letter 2015-07

STATE CORPORATION COMUSSION
BUREAU OF INSURANCE

May 31, 1978
Administrative Letter 1978-4

TO THE PRESIDENT OF THE COMPANY ADDRESSED:

Re: Implementation of Section 38.1-52(11) of the Unfair Trade Practices Act Relating to Adverse Underwriting Decisions.

The Virginia Unfair Trade Practices Act (Sections 38.1-49 et. seq.) was substantially amended during the 1978 Session of the General Assembly. The amendments implement Recommendations 13, 14 and 15 of the President's Commission on Privacy.

These amendments, which go into effect July 1, 1978, require that whenever an individual insured or applicant for insurance is the subject of an idverse underwriting decision, a notice must be given to the individual:

1. that the specific reason(s) for the adverse underwriting decision may be obtained upon request;

2. that the information contained in the company files relating to the adverse underwriting decision may be obtained. This information includes the sources from which the insurance company acquired the information and the specific items of information obtained from these sources. The individual must also be notified that an actual copy of documents in the company files may be obtained upon payment of a reasonable reproduction charge.

Each company is required (a) to release required information when requested as provided by the law and (b) to establish procedures for the correction or deletion of erroneous information in its files or for the inclusion of statements in its file regarding any factual disputes. The new law prohibits a company from refusing to insure any individual solely for the reason that another company refused to insure the individual or because the individual previously obtained insurance through a residual market mechanism. This law gives companies and agents an immunity from civil liability that might arise as a result of the disclosure of any information required under the law.

Obviously, this new law will require significant changes in the procedures of most insurance companies. For this reason, the attached law should be reviewed carefully by each company in order to determine what is required.

Although the Bureau will be working with the various agents associations in the dissemination of information to agents regarding the new law, each company is required to send to each of its licensed agents the Agent Guidelines attached as Appendix B or its equivalent.

Because of the complexity of the law and because different insurance institutions have different methods of operating, it would be difficult, if not unwise, for the Bureau of Insurance to attempt to anticipate all possible implementation procedures and problems at this time and to resolve them by regulation prior to the July 1, 1978 effective date of the law. Instead, a few general guidelines and filing requirements have been developed. (See Appendix A) As problems arise and as more experience is gained under the law, supplementary guidelines will be issued. Eventually, the Bureau may develop a regulation based on initial enforcement experiences.

After September 1, 1978, the Bureau of Insurance plans to begin periodic unannounced special examinations of companies and their agents to review how companies and agents are implementing this new law. The primary purpose of these reviews will be to educate everyone concerned, including Bureau Staff, as to how the new law can best be implemented. At the same time, appropriate disciplinary actions will be taken against any company or agent failing to comply with the requirements of the law.

If you have any questions or if a specific problem arises, please do not hesitate to contact the Bureau of Insurance. Inquiries concerning property and casualty insurance should be directed to Garland L. Hazelwood, Jr. at (804)786-3666. Inquiries concerning life and health insurance should be communicated to William G. Flournoy at (804) 786-7691.

To the extent policy positions have been developed, your questions will be answered immediately. To the extent a policy decision has not been made, the Bureau will take your inquiry under advisement and as soon as a position has been developed you will be notified. Periodically, policy positions developed by the Bureau will be summarized in supplementary letters which will be sent to each company.

Sincerely,

John G. Day
Commissioner of Insurance

JGD:dj Attachments

Appendix A

COMPANY GUIDELINES FOR IMPLEMENTATION OF VIRGINIA ADVERSE UNDERWRITING LEGISLATION

I. Required Notification.

A. Adverse Underwriting Decision.

Whenever a company or an agent makes an adverse underwriting decision regarding an individual, a notice must be promptly given to that individual stating that the individual:

(1) is the subject of an adverse underwriting decision;

(2) has the right to obtain in writing the specific reason(s) for the adverse decision upon written request;

(3) is entitled to know the specific items of information supporting the reasons and the sources of that information; and

(4) may review the documents relating to the action taken and, upon payment of a reasonable reproduction charge, obtain copies of those documents.

For more specific details, please review the attached copy of the law.

1/ The definition of "adverse underwriting decision" is set-forth on page 7 of the attached law. It provides: "Adverse underwriting decision" shall mean: i) with respect to life and accident and health insurance, a denial, in whole or in part, of requested insurance coverage, or an offer to insure at other than standard rates, (ii) with respect to all other kinds of insurance, a denial, in whole or in part, of requested coverage, or a rating which is based on information which differs from that which the individual furnished, (iii) a refusal to renew insurance coverage in whole or in part, iv) a cancellation of any insurance coverage in whole or in part, or (v) failure of an agent to apply for requested coverage with a specific insurance institution requested by the individual or when the agent obtains coverage through any residual market mechanism, such as that provided pursuant to S38.1-264 (Virginia Automobile Insurance Plan) or Chapter 19, 538.1746 et seq. (Virginia Property Insurance Association).

Because of the variety of marketing, underwriting and related communication practices in the insurance industry, it is difficult to prescribe a standard notice format that will cover each and every situation. one exception relates to the situation in which an agent decides to place an individual in a residual market mechanism. The standard procedures required in this situation are described in the Agent Guidelines (Appendix B).

Accordingly, the Bureau will not prescribe a standard notice format for adverse underwriting decisions other than those involving the placement of an individual in a residual market mechanism. Instead, companies and agents will be permitted to develop their own notice forms provided that the form meets the following general requirements:

(1) The form must notify the applicant or insured of the fact that he or she has been the subject of an adverse underwriting decision. Companies and agents are required to be as specific as possible regarding the type of adverse underwriting decision.

(2) The size and style of type must readily call to the applicant's or insured's attention that a message of some importance is being communicated. The size and style of type must also facilitate the reading of the notification to the maximum degree possible.

(3) The language of the notice must be clear and simple.

(4) The notice must be dated and must prominently display the name of the company and the name and address of the person-or department to contact for additional information. If the notice relates to an adverse underwriting decision made solely by an agent, only the agent's name and address must be prominently displayed.

While the Bureau will permit some variations in the phrasing of the proposed notice, the following language will give some indication of the preferred style:

VIRGINIA LAW REQUIRES THAT YOU BE GIVEN T'HIS NOTICE
READ IT CAREFULLY AND KNOW YOUR RIGHTS:

The insurance coverage for which you applied has been denied in whole or in part.

Your insurance rate is based on information different from that which you supplied.

Your insurance has been cancelled or nonrenewed.

Your insurance agent has failed to make an application for you to the company you requested.

You are being offered insurance at other than standard rates. (Life and Accident and Health Insurance only.)

Other:

You have the right to obtain the specific reasons for this action upon written request. You are also entitled to know the specific items of information concerning you that supports the company's decision and the sources of the information. Upon the payment of reasonable reproduction charges, you have a right to obtain copies of documents in the underwriting files relating to the action taken. Disclosure of medical-record information may differ from that described above.

If you would like to request additional information, please contact: You must request any additional information within sixty (60) days of the date of this notice.

(Form Number and Edition Date)

B. Recruired Notification With Respect to the Non-Renewal and Cancellation of Automobile, Fire and Homeowners Insurance Policies Pursuant to S38.1-381.5 and S38.1-371.2 of the Code of TUr-g-Inia.

The new law makes significant changes in existing law relating to the procedures required to cancel, non-renew or refuse to issue a personal automobile, fire or homeowners insurance policy. Previously, any cancellation of an automobile insurance policy in force for less than 60 days and any cancellation of a fire or homeowners insurance policy in force for less than 90 days was exempt from regulation.

Under the new law, similar exemptions do not exist. Any refusal to issue, cancellation, or non-renewal

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of a policy constitutes an adverse underwriting decision and the required notice must be given. However, the new law does not change the 60 and 90 day exemptions from other notice provisions of Sections 38.1-381.5 and 38.1-371.2 of the Code of Virginia. That the amended law applies only to notices that must be given on or after July 1, 1978.

Any previously approved form expanded to include the following language will be deemed approved by the Commissioner.

> "ADDITIONAL INFORMATION REGARDING THE REASON(S) FOR CANCELLATION/REFUSAL TO RENEW: Upon written request to the company made within sixty (60) days of the date of this notice, you have a right to obtain in writing the specific items of information that support the reasons given, and the source(s) of this ***information.*** *You* are also entitled to obtain the nature and substance of the file relating to the action taken by telephone or you may personally review the file. Upon payment of reasonable reproduction charges, you are entitled to copies of any document in the file relating to the action taken."

Any company wishing to use language which differs from the language above must file its proposed form with the Bureau of Insurance and obtain its approval prior to use.

C. Required Notice and Approval of Notice Forms Other Than Those Provided for in Section 1-8.1-381.5 and Section 38.1-371.2 of the Code of Virginia.

The new law requires that notice be given for each adverse underwriting decision made on or after July 1, 1978. Any notice that a company is required to give between July 1, 1978 and September 1, 1978 that is substantially in compliance with the guidelines set forth in Part IA of these guidelines will be deemed approved by the Bureau of Insurance.

Notice forms that a company plans to use on and after September 1, 1978 must be filed with the Bureau of insurance on or before August 1, 1978. The forms will be deemed approved if the company is not informed to the contrarv within fifteen (15) days after the forms have been received by '%.-.he Bureau of Insurance. If, at a later date, the Bureau decides to withdraw approval, the company will be given ample notice and an opportunity to be heard.

Forms to be used by agents for adverse underwriting decisions made independently of any company need not be filed with the Bureau of Insurance. Nevertheless, these forms must comply substantially with these guidelines. Please note, however, that use of a standard form will be required when an agent places an individual with the Virginia Automobile Insurance Plan (Assigned Risk Plan) or the Virginia Property Insurance Association (FAIR Plan). Agents may obtain this standard form from the same source that they presently obtain the applications for the Virginia Automobile Insurance Plan. Specific procedures for placing individuals in residual markets is set forth in the Agent Guidelines (Appendix B).

Il. The Requirement to Give Specific Reasons for the Adverse Underwriting Decision.

The law requires that specific reasons be given to an individual who is the subject of an adverse underwriting decision upon written request. It is difficult to delineate with precision the specificity of the reasons required in each and every case. 1his will be a matter of judgment; however, it is clear that the purpose of the new law will not be met with generalizations or with insurance phraseology not easily understood by the average person.

Probably the best way to describe the type of specificity required is by way of illustration. Assume that a company decides not to write an individual because of information concerning abuse of alcohol by that individual. In this event, if the individual requests specific reasons for the company's refusal to provide coverage, it is not enough for the company to merely say that the individual was declined insurance because he or she is a "moral hazard" or because the individual has a "health problem." Instead, the company would have to be more specific and disclose that the individual was refused coverage because of a "drinking problem." The company is not required at this time to go further and give the specific information upon which it reached this conclusion. To the extent this information exists, the individual may obtain it by asking in writing for the specific information relied upon and the source(s) of the information.

A number of companies have expressed a preference for giving the specific reasons each and every time an adverse underwriting decision is made, rather than giving individuals notice of their right to get the reasons. The Bureau of Insurance believes that whenever a company or agent gives the specific reasons for the adverse underwriting decision at the time the decision is made, there is no requirement under the law to also give notice that a

person is entitled to reasons. However, a company or agent that elects this alternative still is required to give notice that the specific items of information and the sources of information may be obtained, that the individual may personally review the file and that copies of documents reiating to the decision in the company's or agent's possession may be obtained.

III. Disclosure of Source of information.

The new law requires the disclosure of the source of information to an individual who is the subject of an adverse underwriting decision in most instances. However, there are some exceptions. The name or other identifying particulars of any source, other than an institutional source or insurance-support organization, need not be disclosed if the information was provided with the understanding that the source could not be revealed. Also, the source, other than an institutional source or insurance support organization, need not be disclosed if the information was provided prior to, July 1, 1978.

IV. Permitted Activities Designed to Reduce Duplicate Compliance Activities.

In many cases, several companies and agents will rightfully be concerned as to who has the responsibility for complying with the law with respect to a particular adverse underwriting decision. Administrative convenience dictates that only one notice be provided even when one possible interpretation of the law would indicate that several insurance institutions have responsibility to provide a notice. Subsection 11(k) of the new law is designed to permit some flexibility in this respect. The subsection permits the following:

(a) A company may use either its agent or itself by mutual agreement to fulfill the notice obligation of the other. For example, if one of the companies with whom an independent agent is licensed refuses to insure an individual, either the company or the agent may give the required notice.

(b) With respect to the personal review or copying of a investigative consumer report or a report of another type of insurance-support organization, the insurance company may make arrangements to have the disclosure handled

directly by the insurance-support organization. However, the insurance company will be held responsible for any failure of the support organization to fulfill the company's obligation under the law. Accordingly, companies electing to use this option should exercise some oversight regarding the activities of insurance-support organization;

(c) In certain circumstances when the adverse underwriting decision is triggered by the action of another insurance institution, arrangements may be made so that the notification is provided to the individual by the institution that is in the best position to do so administratively. For example, declination of coverage resulting from a decision by a reinsurance company could be communicated to the individual by the primary company with whom the individual requests coverage.

V. Medical Record Information.

Medical record information contained in company files relating to an individual's medical or psychiatric history, diagnosis, condition, treatment or evaluation need not be disclosed directly to an individual applicant or insured. At the company's option, it may be disclosed to such individual or to a medical professional designated by the individual upon request or, if a physician has indicated that release of the medical information may be injurious to the individual's health or well-being, the medical-record information must be released in accordance with Section 8.01413 of the Code of Virginia.

VI. Additional Guidance

If you have any questions or if a specific problem arises, please do not hesitate to let the Bureau of Insurance know. inquiries concerning property and casualty insurance should be directed to Garland L. Hazelwood, Jr. at (804)7863666. Inquiries concerning life and health insurance should be communicated to William G. Flournoy at (804)786-7691.

To the extent policy positions have been developed your questions will be answered immediately. To the extent a policy decision has not been made, the Bureau will take your inquiry under advisement and as soon as a position has been developed, you will be notified. Periodically, policy positions developed by the Bureau will be summarized in supplementary letters which will be sent to each company.

Appendix B

AGENT GUIDELINES FOR IMPLEMENTATION OF VIRGINIA ADVERSE UNDERWRITING LEGISLATION

On July 1, 1978 a new law will go into effect in Virginia that applies to personal life, health, and property and casualty insurance coverages. This law requires that whenever an individual is the subject of an adverse underwriting decision, a notice must be given advising the individual of the rights created by this new law, including the right to obtain the reasons for the decision and the right to review the information supporting the reasons.

This law does not require an agent to change current underwriting practices that conform with existing law, with one exception; it simply requires that these practices be explained when an adverse underwriting decision occurs. The one exception is the new prohibition against refusing to insure an individual solely for the reason that another company denied the individual insurance or because coverage had previously been obtained through a residual market mechanism. The law also grants immunity to any person, including agents, from civil liability for disclosing or receiving information pursuant to its provisions.

I. Adverse Underwriting Decisions:

With regard to personal life and health insurance the following constitutes an adverse underwriting decision and thus, notice is required:

1. The declining of requested insurance coverage in whole or in part;

2. An offer to insure at other than standard rates;

3. Cancellation or nonrenewal of coverage in whole or in part;

4. Failure of an agent to apply for requested coverage with a specific insurance institution requested by the individual.

With regard to personal property and casualty insurance, the following constitutes an adverse underwriting decision and thus, notice is required:

1. A denial, in whole or in part, of requested coverage;

2. A rate based on information different from that furnished by the individual;

3. Cancellation or nonrenewal of coverage in whole or in part;

4. Failure of an agent to apply for requested coverage with a specific insurance institution requested by the individual;

5. Obtaining of insurance coverage through any residual market system.

II. Notice Forms:

Each company writing personal lines insurance has been notified that it must-file with the Bureau of Insurance the notice form(s) prior to August 1, 1978 that it intends to use on or after September 1, 1978. Each company is also required to set up its own compliance procedures. You should note that the law requires that only one notice be given to each individual who is the subject of an adverse underwriting decision. Thus, agreements between a company and its agents as to who is responsible for assuring that the notice is given is contemplated by the law. In some cases the company may agree to send the notice directly to the insured or applicant; in other cases, agents may agree to prepare and deliver the notice. Agents should check with each company they represent for instructions as to how to proceed.

In those cases where an agent makes an adverse underwriting decision without submitting an application to any company which does not involve a residual market mechanism, each agent must give notice on and after July 1, 1978 to the individual of the rights created by the new law. This can be done by the agent either by letter or by use of a notice form developed by the agent. While notice forms developed by agents for use independently of companies need not be filed with the Bureau of Insurance, such forms must make the disclosures required by law. When an oral inquiry by an individual results in an adverse underwriting decision, the required notice may be given orally unless the individual makes a written request for a response in writing.

Ill. Residual Markets:

In those cases where an agent makes a decision to obtain coverage for an individual thrcugh the Virginia

Automobile Insurance Plan (automobile assigned risk plan) or through the Virginia Property Insurance Association (FAIR Plan), a standard form promulgated by the Bureau of Insurance must be used to notify the individual of his rights under the new law on and after July 1, 1978. A supply of these forms may be obtained for both residual market mechanisms from: Automobile Insurance Plans Service Office, 733 Third Avenue, New York, New York 10017.

Whenever an agent prepares an application to either the assigned risk plan or the FAIR Plan, the standard notice form must be delivered to the applicant for signature and an indication of whether or not the applicant chooses to exercise the rights created by the new law. Each standard form contains three copies of the required notice. one copy is to be delivered to the applicant; one copy is to be retained by the agent, and one copy is to be stapled to the application submitted to the residual market mechanism. When an individual requests the reasons for being placed in a residual market mechanism, it is not permissible to advise the individual that he has been declined insurance by an insurance company without including the company name.

IV. Additional Guidance:

Questions regarding compliance with this new law should be directed to the companies which you represent or your agents' association.

CHAPTER 441

An Act to amend and reenact .~ 38.1-52. 38.1-371.2 and 38.1-381.5 of the Code ol Virginia. relating to the definition of unfair trade practices in the business of insurance and grounds and procedures for cancellation ol fire and automobile insurance policies.

Approved March 31, 1978

Be it enacted by the General Assembly of Virginia:

1. That 38.1-52. 38.1-371.2 and 38.1-381.5 of the Code of Virginia are amended and reenacted as follows:

§ 38.1-52. Unfair methods of competition and unfair or deceptive acts or practices defined.-The following are hereby defined as unfair methods of competition and unfair and deceptive acts or practices in the business of insurance:

(1) Misrepresentations and false advertising of insurance policies. -Making. issuing, circulating. or causing to be made, issued or circulated, any estimate, illustration, circular, statement, sales presentation, omission. or comparison which:

(a) Misrepresents the benefits, advantages, conditions or terms of any insurance policy: or

(b) Misrepresents the dividends or share of the surplus to be received on any insurance policy: or

(c) Makes any false or misleading statements as to the dividends or share of surplus previously paid*on any insurance policy, or

(d) Is misleading or is a misrepresentation as to the financial condition of any person, or as to the legal reserve system upon which any life insurer operates: or

(e) Uses any name or title of any insurance policy or class of insurance policies misrepresenting the true nature thereof; or

(f) Is a misrepresentation for the purpose of inducing or tending to induce the lapse. forfeiture, exchange, conversion, or surrender of any insurance policy, or

(g) Is a misrepresentation for the purpose of effecting a pledge or assignment of or effecting a loan against any insurance policy: or

(h) Misrepresents any insurance policy as being a share or shares of stock.

(2) False information and advertising generally.-Making, publishing, disseminating, circulating, or placing before the public, or causing. directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster. or over any radio or television station, or in any other way, an advertisement, announcement or statement containini any assertion, representation or statement with respect to the business of insurance or with respect to any person in the conduct of his insurance business, which is untrue, deceptive or misleading.

(3) Defamation.-Making, publishing, disseminating, or circulating, directly or indirectly, or aiding, abetting or encouraging the making, publishing, disseminating or circulating of any oral or written statement or any pamphlet. circular, article or literature which is

false, or maliciously critical of or derogatory to the financial condition of any person, and which is calculated to injure such person.

(4) Boycott, coercion and intimidation.-Entering into any agreement to commit, or by any concerted action committing, any act of boycott, coercion or intimidation resulting in or tending to result in unreasonable restraint of. or monopoly in, the business of insurance.

(5) False statements and entries.-a) Knowingly filing with any supervisory or other public official, or knowingly making, publishing, disseminating, circulating or delivering to any person, or placing before the public. or knowingly causing, directly or indirectly, to be made, published, disseminated, circulated, delivered to any person. or placed before the public, any false material statement of fact as to the financial condition of a person.

(b) Knowingly making any false entry of a material fact in any book, report or statemenc of any person or *knowingly omitting* to make a true entry of any material fact pertaining to the business of such person in any book~ report or statement of such person.

(6) Stock operations and advisory board contracts.-Issuing or delivering or permitting agents. officers, or employees to issue or deliver capital stock, or benefit certificates or shares in any corporation. or securities or any special or advisory board contracts or other contracts of any kind promising returns and profits as an inducement to insurance.

(7) Unfair discrimination.-(a) Making or permitting any unfair discrimination between individuals of the same class and equal expectation of life in the rates 'charged for any contract of life insurance or of life annuity or in the dividends or other benefits payable thereon, or in any other of the terms and conditions of such contract

(b) Making or permitting any unfair discrimination between individuals of the same class and of essentially the same hazard in the amount of premium, policy fees. or rates Charged for any policy or contract of accident or health insurance or in the benefits payable thereunder, or in any of the terms or conditions of such contract. or in any other manner whatever.

(8) Rebates.-(a) Except as otherwise expressly provided by law, knowingly permitting or offering to make or making any contract of insurance. suretyship or annuity, or agreement as to such contract other than as plainly expressed in the contract issued thereon, or paying or allowing, or giving or offering to pay, allow or give. directly or indirectly, as inducement to any contract of insurance, suretyship or annuity, any rebate of premium payabie on the contract. or any special favor or advantage in the dividends or other benefits thereon. or any valuable consideration or inducement whatever not specified in the contract, except in accordance with an applicable rating plan authorized for use in this Commonwealth: or giving or selling or purchasing or offering to give, sell or purchase as inducement to such insurance. sureryship or annuity, or in connection therewith, any stocks, bonds, or other securities of any company, or any dividends or profits accrued thereon, or anything oil value whatsoever riot specified in the contract: or receiving or ccepting as inducement to contracts of insurance, suretyship or

annuity, any rebate of premium payable on the contract, or any special favor or advantage in the dividends or other benefit to accrue thereon, or any valuable consideration or inducement not specified in the contract.

(b) Nothing in subsection (7) or paragraph (a) of this subsection shall be construed as including within the definition of discrimination or rebates any of the following practices: (i) In the case of any contract of life insurance or life annuity, paying bonuses to policyholders or otherwise abating their premiums in whole or in part out of surplus accumulated from nonparticipating insurance, provided that any such bonuses or abatement of premiums shall be fair and equitable to policyholders and for the best interests of tile company and its policyholders; 00 in the case of life, accident and sickness insurance policies issued on the industrial debit plan, making allowance to policyholders who have continuously for a specified period made premium payments directly to an office of the insurer in an amount which fairly represents the saving in collection expense: (iii) readjustment of the rate of premium for a group insurance policy based on the loss or expense thereunder, at the end of the first or any subsequent policy year of insurance thereunder, which may be made retroactively only for such policy year, (iv) in the case of life insurance companies, allowing its bona fide employees to receive a commission on the premiums paid by them on policies on their own lives: (v) issuing life or accident and health policies on a salary savings or payroll deduction plan at a reduced rate commensurate with the savings made by the use of such plan, (vi) paying commissions or other compensation to duly licensed agents or brokers,. or, (vii) allowing or returning to participating policyholders, members or subscribers, dividends, savings or unabsorbed premium payments.

(8a) Unfair claim settlement practices-r-Committing or performing with such frequency as to indicate a general business practice any of the following:

(a) Misrepresenting pertinent facts or insurance policy provisions relating to coverages at issue:

(b) Failing to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies:

(c) Failing to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies;

(d) Refusing arbitrarily and unreasonably to pay a claim;

(e) Failing to affirm or deny coverage of claims within a reasonable time after proof of loss statements have been completed:

(f) Not attempting in good faith to effectuate prompt, fair, and equitable settlements of claims in which liability has become reasonably clear

(9) Compelling insureds to institute litigation to recover amounts due under an insurance policy by offering substantially less than the amounts ultimately recovered in actions brought by such insureds;

(h) Attempting to settle a claim for less than the amount to which a reasonable man would have believed he was entitled by reference to written or printed advertising material, accompanying or made part of an application:

(;.-_4 (i) Attempting to settle claims on the basis of an application

which was altered without notice to, or knowledge or consent of, the insured;

(j) Making claims payments to insureds or beneficiaries not accompanied by a statement setting forth the coverage under which payments are being made:

(k) Making known to insureds or claimants a policy of appealing from arbitration awards in favor of insureds or claimants for the purpose of compelling them to accept settlements or compromises less than the amount awarded in arbitration:

(1) Delaying the investigation or payment of claims by requiring an insured, claimant, or the physician of either to submit a preliminary claim report and then requiring the subsequent submission of formal proof of loss forms, both of which submissions contain substantially the same information,

on) Failing to settle promptly claims where liability has become reasonably clear under one portion of the insurnace policy coverage in order to influence settlements under other portions of the insurance policy coverage,,

(n) Failing to provide promptly a reasonable explanation of the basis in the insurance policy in relation to the facts or applicable law for denial of a claim. or for the offer of a compromise settlement.

(8b) Failure to maintain record of complaints.-Failure of any person other than agents or brokers to maintain a complete record of all the complaints which it has received since the date of its last examination under § 38.1-174 of the Code of Virginia. This record shall indicate the total number of complaints, their classification by line 'of insurance, the nature of each complaint, the disposition of these complaints, and the time it took to process each complaint. For purposes of this subsection, "complaint" shall mean any written communication primarily expressing a grievance.

(8c) Misrepresentation in insurance applications.-Making false or fraudulent statements or representations on or relative to an application for an insurance policy, for the purpose of obtaining a fee, commission, money, or other benefit from any insurer, agent, broker, or individual.

(9) (Repealed.]

(10) Favored agent or insurer coercion of debtors.-(a) (i) Requiring. as a condition precedent to the lending of money or extension of credit, or any renewal thereof, that the person to whom such money or credit is extended or whose obligation the creditor is to acquire or finance, negotiate any policy or contract of insurance through a particular insurer or group of insurers or agent or broker or group of agents or brokers;

(ii) Unreasonably disapproving the insurance policy provided by a borrower for the protection of Elie property securing the credit or lien: or

(iii) Requiring directly or 'indirectly that any borrower, mortgagor, purchaser, insurer, broker, or agent pay a separate charge in connection with the handling of any insurance policy required as security for a loan or real estate, or pay a separate charge to substitute the insurance policy of one insurer for that of another;

iv) Using or disclosing information including, but not limited to,

policy information and policy expiration dates resulting from a requirement that a borrower, mortgagor or purchaser furnish insurance of any kind of real property being conveyed or used as collateral security to a loan when such information is to the advantage of the mortgagee, vendor, or lender, or any subsidiary thereof, or is to the detriment of the borrower, mortgagor, purchaser, insurer, or the agent or broker complying with such a requirement. except as required by local, State or federal law or regulation.

(b) (i) Paragrah (a) (iii) does not include the interest which may be charged on premium loans or premium advancements in accordance with the security instrument.

(ii) For purposes of paragraph (a) (ii), such disapproval shall be deemed unreasonable if it is not based solety on reasonable standards uniformly applied, relating to the extent of coverage required and the financial soundness and the services of an insurer. Such standards shall not discriminate against any particular type of insurer. nor shall such standards call for disapproval of an insurance policy because such policy contains coverage in addition to that required.

(iii) The Commission may investigate the affairs of any person to whom this subsection applies to determine whether such person has violated this subsection. If a violation of this subsection is found, the person in violation shall be subject to the same procedures and penalties as are applicable to other provisions of this article.

(iv) For purposes of this section, "person" includes any individual, corporation, association, partnership, or other legal entity.

(71) Adverse Underwriting Decisions:

(a) Failure of an insurance institution to give a written notice in a form that has been approved by the Commissioner of Insurance whenever an adverse underwriting decision is made, including those involving policies referred to in § 38.1-371.2 (c) *(1) and § 38.1-331.5* (f) *(3). to the individual who is the subject of the adverse underwriting decision. The notice must set forth the following information: (i) the right of the individual upon written request to obtain in writing the specific reasons for the adverse underwriting decision. (ii) the obligation of the insurance institution to disclose upon written request by the individual the specific items of information set forth in (c). and (iii) the individual's rights of access to all recorded information as described in (d). When an adverse underwriting decision results solely from an oral request or inquiry, the required notice may be given orally. If during the oral request or i nquirv. a request lop reasons in writing is made, an insurance institution must comply with such request within ten working-days from the date the request is made.*

(b) Failure of an insurance institution upon written request to disclose in writing to an individual who is the subject of an adverse underwriting decision. including those involving policies referred to in § 38.1-371.2 (c) *(1) and § 38.1-381.5* (f) *(3). the specific reasons for the adverse underwriting decision, except that specflic medical-record information may be disclosed either directly, or indirectly through a medical professional designated by the individual. whichever the insurance institution prefers. Such a request must be made within sixty days from the date that the notice provided for*

/a) is mailed to or otherwise communicated to the individual who has been the subject of an adverse underwriting decision.

(c) Failure of an insurance institution to disclose in writing upon the written request of the individual who has requested reasons pursuant to (b): (i) the specific items of information that support the reasons given pursuant to (b). except that details of medical-record information may be disclosed either directly or through a medical professional designated by the individual whichever the insurance institution prefers. and (ii) the names and addresses of the institutional sources and insurance support organizations that supplied the specific items of information given pursuant to (c) (i). Such a request must be made within sixty days from the date that The notice provided for in (a) is mailed to or otherwise communicated to the individual who has been the subject of an adverse underwriting decision.

(d) *Failure of an insurance institution to permit the individual who has requested reasons pursuant to (b). at the individual's option and upon written request, to see and obtain by mail or otherwise a copy of all recorded information pertaining to the individual used to made the adverse underwriting decision, to the extent recorded information exists, or to be apprised of the nature and substance of that information by telephone if the insurance institution has taken reasonable steps to verify the identity of the individual. Such information need not contain the name or other identifying particulars of any source, other than an institutional source or insurance-support organization, which provided such information on the condition or with the understanding that his, her, - or its identity not be revealed or which provided this information prior to July one, nineteen hundred seventy-eight. An individual may be apprised of the nature and substance of any medical-record information by telephone, and may be permitted to see and obtain copies* of *medical-record information, other than hospital or physician records and papers subject to §8.01-413 of the Code* of *Virginia, either directly, or through a medical professional designated by the individual, whichever the insurance institution prefers. An individual may obtain and copy hospital and physician records and papers subject to § 8.01-413 of the Code of Virginia in accordance with the procedures set forth in § 8.01-413. The insurance institution shall be allowed to charge reasonable fees to cover any copying, handling, and mailing expenses incurred in providing copies of the recorded information used to make the adverse underwriting decision. The written request to see, obtain a copy, or learn the nature or substance of recorded information must be made within sixty days after the notice provided for in subsection (a) is mailed to or otherwise communicated to the individual who has been the subject of the adverse underwriting decision.*

(e) Failure of an insurance institution to inform the individual who notifies such institution in writing that the adverse underwriting decision is based on erroneous information, of the procedures. inc!uding those provided by the Fair Credit Reporting Act. whereby the individual may correct, amend, or file a statement regarding any factual dispute with respect to any information disclosed pursuant to (b). (c) and (d).

(f) Failure of an insurance institution to establish reasonable procedures for the implementation of (a). (b). (c). (d). and (e) above.

(g) Inquiring directly by an insurance Institution or indirectly by an insurance institution through an insurance-supporr organizaton or institutional source with respect to: (t) any previous adverse underwriting decision on an individual or (it) whether an individual has obtained insurance through the residual market, unless such Inquiries also request the reasons why the individual was subject to the adverse underwriting decision or obtained insurance through the residual market.

(h) Making any adverse underwriting decision based on the mere fact of: (I) a previous adverse underwriting decision or (ii) an individual's having obtained insurance through the residual market; provided, however, that an insurance institution may base an adverse underwriting decision on other information obtained from the source, including other insurance institutions.

(i) *Basing an adverse underwriting decision, in whole or in part, on information about an individual obtained from an insurance-support organization whose primary source of information is insurance institutions or other insurance-support organizations;provided, however, an insurance institution may base an adverse underwriting decision on further information obtained from the original source, including other insurance institutions.*

(j) For the purpose of this section. (1) "individual" shall mean any natural person who is a past, present or proposed named or principal insured including any principal -insured, under a family or group policy or similar arrangement of coverage for a person in a group, or policy owner, which natural person has or is seeking insurance for personal family or household needs and shall not include an individual having or seeking insurance primarily for business or professional needs. (2) "insurance institution" shall mean any agent, corporation, association, partnership, reciprocal exchange, interinsurer, Lloyds insurer, fraternal benefit society or any other legal entity engaged in the business of insurance including medical, hospital, dental and optometric service plans as provided for in Title 32 of the Code of Virginia. (3)"insurance-support organization" shall mean an organization, other than a State agency, which regularly engages in whole or in part in the practice of assembling or evaluating information on individuals for the purpose of providing such information or evaluation to insurance institutions for insurance purposes.(4) "adverse underwriting decision" shall mean: (I) with respect to life and accident and health insurance, a denial, in whole or in part, of requested insurance coverage, or an offer to insure at other than standard rates. (ii) with respect to all other kinds of insurance, a denial, in whole or in part, of requested coverage, or a rating which is based on information which differs from that which the individual furnished. (iii) a refusal to renew insurance coverage in whole or in part. (iv) a cancellation of any insurance coverage in whole or in part, or (y) failure of an agent to apply for requested coverage with a specific insurance institution requested by the individual or when the agent obtains coverage through any residual market mechanism. such as that provided pursuant to § 38.1-264 (Virginia Automobile Insurance Plan) or Chapter 19, § 38.1-7-46 at

(Virginia Property Insurance Association). (5) "institutional source" shall mean any natural person, corporation, association,partnership, or other legal entity that provides information as part of his, her or its employment or any other connection with an insurance institution. (6) "medical-record information" shall mean information relating to an individual's medical or psychiatric history,diagnosis, condition, treatment, or evaluation obtained from a medical professional or medical care institution, from the individual himsel. or from his spouse, parent, or guardian for the purpose of making an underwriting decision about the individual. (7) "medical professional" shall mean any physician licensed by the State Board of Medicine. (8) "medical-care institution" shall mean any facility or institution that is licensed to provide medical-care services to individuals, including but not limited to, hospitals, skilled nursing facilities, home-health agencies, clinics, rehabilitation agencies and public-health agencies or health-maintenance organizations. (9) "agent" shall mean any agent, life agent, resident agent, special agent or company representative as defined in 4 38.1-280 of the Code of *Virginia or a salesman or representative for a medical, hospital, dental or optometric plan as provided for in Title 32 of the Code of Virginia.*

(k) The obligations imposed bv subsection (11) upon an insurance agent shall be deemed to be satisfied if *another insurance institution, other than a residual market mechanisim, institutes; formal procedures designed to fulfill the obligations of the agent under this section. When more than one insurance institution other than an agent is involved, those insurance institutions may determine among themselves which will assume the obligations under this subsection. With respect to the copying and disclosure of recorded information as provided in (d), other than records and papers subject to § 8.01-413. supplied by an insurance-support organization, an insurance institution may make arrangements to have its obligations under (d) carried out by the insurance-support organization.*

(l) There shall be no liability on the part of, and no cause of action of any nature shall arise against the Commissioner of Insurance or his subordinates: any insurance institution, its authorized representatives, its agents, or employees: or any firm, person or corporation furnishing, disclosing information to, or receiving information from any person, entity or individual which is disclosed pursuant to subsection (11) except as to false information knowingly furnished with malice or willful intent to injure an individual. This subsection shall not prevent disciplinary actions against any insurance institution for violations of the insurance laws of Virginia.

§ 38.1-371.2. Grounds and procedure for termination of policy: contents of notice: review by Commissioner: exceptions; immunity from liability.-(a) Notwithstanding the provisions of § 38.1-366. no policy or contract of fire insurance only, or fire insurance in com6ination with other coverages written 'to insure owner-occupied dwellings shall be terminated by an insurer by cancellation except upon written notice for one of the following reasons only:

(1) Failure to pay the premium for the policy when due:

(2) Conviction of a crime arising out of acts increasing the

hazard insured against:

(3) Discovery of fraud or material misrepresentation:

(4) Willful or reckless acts or omissions increasing the hazard insured against as determined from a physical inspection of the insured premises; or,

(5) Physical changes in the property which result in the property becoming uninsurable as determined from a physical inspection of the insured premises. Nor shall any such policy or contract of fire insurance only, or fire insurance in combination with other coverages, be terminated by an insurer by refusal to renew except at the expiration of the stated policy period or term and unless the insurer or its agent acting on behalf of the insurer, mails or delivers to the named insured at the address stated in the policy. not less than thirty days prior to the expiration date of the policy. written notice of the insurer's refusal to renew the policy or contract. A written notice of cancellation of or refusal to renew such policy or contract of fire insurance only, or fire insurance written in combination with other coverage shall:

(1) State the date upon which the insurer proposes to terminate the policy or contract:

(2) State the specific reason or reasons of the insurer for terminating the policy or contract *and provide for the notification required by §38. 1-52 (11) (a) (ii) and (iii) :*

(3) Advise the insured that he may request in writing within ten days of receipt of the insurer's notice of termination that the Commissioner of Insurance review the action of the insurer in terminating the policy or contract; and,

(4) Advise the insured of his possible eligibility for fire insurance coverage through the Virginia Iasurance Placement Facility.

(b) Notwithstanding any provision herein contained. any insured or his attorney shall, within ten days of receipt of the notice of termination, be entitled to request in writing to the Commissioner of Insurance that he review the action of the insurer in terminating such policy or contract of fire insurance only or fire insurance in combination with other insurance coverages written to insure owner-occupied dwellings. Upon receipt of such request. the Commissioner of Insurance shall promptly initiate a review to determine whether the insurer's cancellation or refusal to renew complies with the requirements of this section. The policy shall remain in full force and effect during the pendency of the review by the Commissioner of Insurance except where the cancellation or refusal to renew is for reason of nonpayment of premium, in which case the policy shall terminate as of the date stated in the notice. Where the Commissioner finds from such review that the cancellation or refusal to renew has not been effected in compliance with the requirements of this section, he shall forthwith notify the insurer and the insured that the cancellation or refusal to renew is no(effective. Nothing herein shall be construed as authorizing the Commissioner of Insurance to substitute his judgment as to underwriting for that Of the insurer.

(c) Nothing in this section shall apply:

(1) To any policy of fire insurance only, or fire insurance in combination with other insurance coverages, written to insure

owner-occupied dwellings, which has been in effect for less than ninety days when the notice of termination is mailed or delivered to the insured, unless it is a renewal policy:

(2) If the insurer or its agent acting on behalf of the insurer has manifested its willingness to renew by issuing or offering to issue a renewal policy, certificate or other evidence of renewal, or has otherwise manifested such intention in writing to the insured. Such written manifestation shall include the name of a proposed insurer, the expiration date of the policy, the type of insurance coverage and information regarding the estimated renewal premium:

(3) If the named insured has notified in writing the insurer or its agent that his wishes the policy to be cancelled. or that lie does not wish the policy to be renewed, or if, prior to the date of expiration, he fails to accept the offer of the insurer to renew the policy:

(4) To any contract or policy of fire insurance only, or fire insurance in combination with other insurance coverages written through the Virginia Insurance Placement Facility or any insurance placement facility established pursuant to chapter 19 (§ 38.1-746 et seq.) of Title 38-1.

(d) There shall be no liability on the part of and no cause of action of any nature shall anse against the Commissioner of Insurance or his subordinates; any insurer, its ' authorized representative, its agents. its employees: or any firm. person or corporation furnishing to the insurer information as to reasons for cancellation or refusal to renew; for any statement made by any of them in complying with this section or for the providing of information periaining thereto.

(e) Nothing in this section shall be construed to require an insurer to renew a policy of fire insurance only, or fire insurance in combination with other insurance coverage written to insure owner-occupied dwellings, if the insured does not conform to the occupational or membership requirements of an insurer who limits its writings to an occupation or membership of an organization.

(f) All acts and parts of acts are hereby repealed insofar as they are inconsistent herewith. If any provision or clause of this section or application thereof to any person or situation is held invalid, such invalidity shall not affect other provisions or applications of the section which can be given effect without the invalid provision or application, and to this end the provisions of this section are declared to be sever-able.

§ 38.1-381.5. Grounds and procedure for cancellation of or refusal to renew motor vehicle insurance policies: review by Commissioner of Insurance.-W As used in this section the following definitions shall apply:

(1) "policy of automobile insurance" or "policy" means a policy or contract for bodily injury or property damage liability insurance delivered or issued for delivery in this State covering liability arising from the ownership, maintenance or use of any motor vehic!e, insuring as the named insured one individual or husband and wife residents of the same household, and under which the insured vehicle therein designated is either

(i) A motor vehicle of a private passenger or station wagon type that is not used as a public or livery conveyance (which terms shall

not be construed to include car pools) nor rented to others, or

(ii) Any other four wheel motor vehicle with a load capacity of 1500 pounds or less which is not used in the occupation, profession or business (other than farming) of the insured, or as a public or livery conveyance or rented to others. The term "policy of automobile insurance" or "policy" as used in this section shall not include (a) any policy issued through the Virginia Automobile Insurance Plan. or (b) any policy insuring more than four motor vehicles. or (c) any policy covering the operation of a garage. sales agency, repair shop, service station. or public parking place. or (d) any policy providing insurance only on an excess basis. or (e) any other contract providing insurance to such named insured even though such contract may incidentally provide insurance with respect to such motor vehicles.

(2) "Renewal" or "to renew" means the issuance and delivery by an insurer of a policy superseding at the end of the policy period a policy previously issued and delivered by the same insurer, such renewal policy being written to conform with the requirements of the manual rules and rating program currently filed by the insurer with the State Corporation Commission and providing types and limits of coverage at least equal to those contained in the policy being superseded. or the issuance and delivery of a certificate or notice extending the term of a policy beyond its policy period or term with types and limits of coverage at least equal to those contained in. and written to conform with the requirements of the manual rules and rating program currently filed by the insurer with the State Corporation Commission as. the policy being extended: provided, however, that any policy with a policy period or term of less than twelve months or any policy with no fixed expiration date shall for the purpose of this section be considered as if written for successive policy periods or terms of six-months from the original effective date.

(2a) -Cancellation" or "to cancel" means a termination of a policy during the policy period.

(3) "Insurer" means any insurance company, association or exchange authorized to transact the business of automobile insurance in the Commonwealth of Virginia.

(b) This section shall apply only to that portion of a policy of automobile insurance providing the security required by article 4.1 of this chapter, bodily injury and property damage liability, and uninsured motorists coverage.

(c) No insurer shall refuse to renew a policy of automobile insurance solely because of the age, sex, residence, race, color, creed, national origin, ancestry, marital status or lawful occupation (including the military service) of anyone who is insured. But nothing contained herein shall require any insurer to review a policy for an insured where the insured's occupation has changed so as to materially increase the risk.

(d) No insurer shall cancel a policy except for one or more of the following specified reasons:

(1) The named insured or any other operator who either resides in the same household or customarily operates a motor vehicle insured under such policy has had his driver's license suspended or revoked after the effective date of the policy if said policy has been

in effect less than one year or within ninety days prior to the last anniversary of the effective date if the policy has been in effect longer than one year.

(2) The named insured fails to discharge when due any of his obligations in connection with the payment of premium for the policy or any installment thereof, whether payable to the company or its agent either directly or indirectly under any premium finance plan or extension of credit.

(e) No cancellation or refusal to renew by an insurer of a policy of automobile insurance shall be effective unless the insurer shall deliver or mail, to the named insured at the address shown in the policy, a written notice of the cancellation or refusal to renew. Such notice shall:

(1) Be approved as to form by the Commissioner of Insurance prior to its use:

(2) State the date, which shall not be less than forty-five days after mailing to the insured of the notice of cancellation or notice of refusal to renew, on which such cancellation or refusal to renew shall become effeciive. except that such effective date may be not less than fifteen days from the date of mailing or delivery when the policy is being cancelled or not renewed for the reason set forth in clause (2) of paragraph (d).

(3) State the specific reason or reasons of the insurer for cancellation or refusal to renew and provide for the notification required by 38.1-52 (11) (a) (ii) and (iii);

(4) Advise the insured of his right to request in writing, within fifteen days of the receipt of the notice: that the Commissioner of Insurance review the action of the insurer

(5) Advise the insured of the possible availability of other insurance which may be obtained through his agent. through another insurer or through the Virginia Automobile Insurance Plan.

Nothing in paragraph (e) shall prohibit any insurer or agent from including in the notice of cancellation or refusal to renew any additional disclosure statements required by State or federal laws, or any additional information relating to the availability of other insurance.

(f) Nothing in this section shall apply,

(1) If the insurer or its agent acting on behalf of the insurer has manifested its willingness to renew by issuing or offering to issue a renewal policy, certific3te or other evidence of renewal, or has manifested such intention in wr-,ting to the insured, such written manifestation shall include the name of a proposed insurer, the expiration date of the policy, the type of insurance coverage, and information regarding the estimated renewal premium.

(2) If the named insured has notified in writing the insurer or its agent that he wishes the policy to be cancelled or that he does not wish the policy to be renewed, or if, prior to the date of expiration, he fails to accept the offer of the insurer to renew the policy:

(3) To any policy of automobile insurance which has been in

effect less than sixty days, unless it is a renewal policy.

(g) There shall be no liability on the part of and no cause of action of any nature shall arise against the Commissioner of Insurance or his subordinates: any insurer. its authorized representative, its agents, its employees: or any firm, person or corporation furnishing to the insurer information as to reasons for cancellation or refusal to renew: for any statement made by any of them in complying with this section or for the providing of information pertaining thereto. No insurer shall be required to furnish a notice of cancellation or refusal to renew to anyone other than the named insured and the Commissioner of Insurance.

(h) Notwithstanding any provision herein contained, any insured or his attorney shall, within fifteen days of the receipt of the notice of cancellation or notice of refusal to renew. be entitled to request in writing to the Commissioner of Insurance that he review the action of the insurer in cancelling or refusing to renew the policy of such insured. Upon receipt of such request, the Commissioner of Insurance shall promptly initiate a review to determine whether the insurer's cancellation or refusal to renew complies with the requirements of this section. The policy shall remain in full force and effect during the pendency of the review by the Commissioner of Insurance except where the cancellation or refusal to renew is for the reason set forth in clause (2) of paragraph (d), in which case the policy shall terminate as of the date provided in the notice. Where the Commissioner finds from such review that the cancellation or refusal to renew has not been effected in compliance with the requirements of this section, he shall forthwith notify the insurer and the insured that the cancellation or refusal to renew is not effective. Nothing herein shall be construed as authorizing the Commissioner of Insurance to substitute his judgment as to underwriting for that of the insurer. Where the Commissioner finds in favor of the insured. the Commission in their discretion may award such insured reasonable attorneys' fees.

(i) Each insurer shall maintain for a reasonable period of time not less than two years, records of cancellation and refusal to renew and copies of every notice or statement referred to in paragraph (e) of this section which it shall at any time send to any of its insureds.

(j) The provisions of this section shall not apply to any insurer who shall limit the issuance of policies of automobile liability insurance to one class or group of persons engaged in any one particular profession, trade, occupation or business. Nothing herein shall be construed to require an insurer to renew a policy of automobile insurance it the insured does not conform to the occupational or membership requirement of an insurer who limits its writings to an occupation or membership of an organization. Nor shall any insurer be required to renew should the insured become a nonresident of Virginia.

(k) All acts and parts of acts are hereby repealed insofar as they are inconsistent herewith. If any provision or clause of this section or application thereof to any person or situation is held invalid, such invalidity shall not affect other provisions or applications of the section which can be given effect without the invalid provision or application, and to this end the provisio.ns of this section are *declared to* be severable.