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SENATE BILL NO. 256

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the Senate Committee on Commerce and Labor
on February 9, 2024)

(Patron Prior to Substitute—Senator Surovell)

A BILL to amend and reenact §§ 8.01-66.1, as it is currently effective and as it shall become effective, and 38.2-2206 of the Code of Virginia, relating to remedies for bad faith refusal of motor vehicle insurance claims.

Be it enacted by the General Assembly of Virginia:

1. That §§ 8.01-66.1, as it is currently effective and as it shall become effective, and 38.2-2206 of the Code of Virginia are amended and reenacted as follows:

§ 8.01-66.1. (Effective until July 1, 2024) Remedy for arbitrary refusal of motor vehicle insurance claim.

A. Whenever any insurance company licensed in this Commonwealth to write insurance as defined in § 38.2-124 denies, refuses or fails to pay to its insured a property damage claim of \$3,500 or less in excess of the deductible, if any, or medical expense benefit or loss of income benefit claim brought by the insured under the provisions of a policy of motor vehicle insurance issued by such company to the insured and it is subsequently found by the judge of a court of proper jurisdiction that such denial, refusal or failure to pay was not made in good faith, the company shall be liable to the insured in an amount double the amount otherwise due and payable under the provisions of the insured's policy of motor vehicle insurance of the judgment, plus interest from 30 days after the date the claim was submitted in writing to the insurer or its authorized agent, together with reasonable attorney's attorney fees and expenses.

The provisions of this subsection shall be construed to include an insurance company's refusal or failure to pay medical expenses to persons covered under the terms of any medical payments coverage extended under a policy of motor vehicle insurance, when the amount of the claim therefor is \$3,500 or less and the refusal was not made in good faith.

B. Notwithstanding the provisions of subsection A, whenever any insurance company licensed in this Commonwealth to write insurance as defined in § 38.2-124 denies, refuses or fails to pay to a third party claimant, on behalf of an insured to whom such company has issued a policy of motor vehicle liability insurance, a claim of \$3,500 or less made by such third party claimant and if the judge of a court of proper jurisdiction finds that the insured is liable for the claim, the third party claimant shall have a cause of action against the insurance company. If the judge finds that such denial, refusal or failure to pay was not made in good faith, the company, in addition to the liability assumed by the company under the provisions of the insured's policy of motor vehicle liability insurance, shall be liable to the third party claimant in an amount double the amount of the judgment awarded the third party claimant, together with reasonable attorney's attorney fees and expenses.

C. Notwithstanding the provisions of subsections A and B whenever any person who has paid a fee to the Department of Motor Vehicles to register an uninsured motor vehicle pursuant to § 46.2-706 or any person who has furnished proof of financial responsibility in lieu of obtaining a policy or policies of motor vehicle liability insurance pursuant to the provisions of Title 46.2 or any person who is required and has failed either to pay such fee or to furnish such proof pursuant to the provisions of Title 46.2 denies, refuses or fails to pay to a claimant a claim of \$3,500 or less made by such claimant as a result of a motor vehicle accident; and if the trial judge of a court of proper jurisdiction finds that such denial, refusal or failure to pay was not made in good faith, such person shall be liable to the claimant in an amount double the amount otherwise due and payable of the judgment, together with reasonable attorney's attorney fees and expenses.

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

D. 1. Whenever a court of proper jurisdiction finds that an insurance company licensed in this Commonwealth to write insurance as defined in § 38.2-124 denies, refuses or fails to pay to its insured a claim of more than \$3,500 in excess of the deductible, if any, under the provisions of a policy of motor vehicle insurance issued by such company to the insured and it is subsequently found by the judge of a court of proper jurisdiction that such denial, refusal or failure to pay was not made in good faith, the company shall be liable to the insured in the amount otherwise due and payable under the provisions of the insured's policy of motor vehicle insurance, plus interest on the amount due at double the rate provided in § 6.2-301 from the date that the claim was submitted to the insurer or its authorized agent, together with reasonable attorney's fees and expenses.

2. The provisions of this subsection shall be construed to include an insurance company's refusal or

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60 failure to pay medical expenses to persons covered under the terms of any medical payments coverage
 61 extended under a policy of motor vehicle insurance when the refusal was not made in good faith.

62 Whenever any insurance company licensed in the Commonwealth to write motor vehicle insurance as
 63 defined in § 38.2-124 (i) denies, refuses, fails to pay, or fails to make a timely and reasonable settlement
 64 offer to its insured under the provisions of any uninsured or underinsured motorist benefits coverage in
 65 a policy of motor vehicle insurance applicable to the insured after the insured has become legally
 66 entitled to recover or (ii) after all applicable liability policy limits and underlying uninsured and
 67 underinsured motorists benefits have been tendered or paid, rejects a reasonable settlement demand
 68 made by the insured within the policy's coverage limits for uninsured or underinsured motorist benefits
 69 or fails to respond within a reasonable time after being presented with such demand after the insured
 70 has become legally entitled to recover, and it is subsequently found by a court of proper jurisdiction
 71 that such denial, refusal, or failure to timely pay or failure to make a timely and reasonable settlement
 72 offer, rejection of a reasonable settlement demand, or failure to timely accept a reasonable settlement
 73 demand was not made in good faith, in addition to the amount due and owing by the insurance
 74 company to its insured on the judgment against the tortfeasor, the insurance company shall also be
 75 liable to the insured in an amount double the amount of the judgment obtained against the underinsured
 76 motorist, uninsured motorist, immune motorist, unknown owner or operator, or released defendant in the
 77 underlying personal injury or wrongful death action, up to \$500,000, together with reasonable attorney
 78 fees for bringing a claim under this subsection, and all costs and expenses incurred by the insured to
 79 secure a judgment against the tortfeasor, and interest from 30 days after the date of such denial or
 80 failure or the date the reasonable settlement demand. The insured or the insured's representative may
 81 seek adjudication of a claim that the insurance company did not act in good faith as a posttrial motion
 82 before the court in which the underlying personal injury or wrongful death judgment was obtained or as
 83 a separate action against the company. If the insured or the insured's representative seeks adjudication
 84 as a separate action and the underlying judgment is appealed, any action filed under this subsection
 85 shall be stayed by the court pending final resolution of the appeal of the underlying judgment.

86 For the purposes of this section, the term "legally entitled to recover" means the point in time when
 87 liability to the uninsured or underinsured motorist insurance company's insured has become reasonably
 88 foreseeable without necessity of a judgment by its insured against an uninsured or underinsured
 89 motorist, an unknown owner or operator, or an immune motorist.

90 **§ 8.01-66.1. (Effective July 1, 2024) Remedy for arbitrary refusal of motor vehicle insurance**
 91 **claim.**

92 A. Whenever any insurance company licensed in this Commonwealth to write insurance as defined in
 93 § 38.2-124 denies, refuses or fails to pay to its insured a ~~property damage claim of \$3,500 or less in~~
 94 ~~excess of the deductible, if any, or medical expense benefit or loss of income benefit claim~~ under the
 95 provisions of a policy of motor vehicle insurance issued by such company to the insured and it is
 96 subsequently found by the judge of a court of proper jurisdiction that such denial, refusal or failure to
 97 pay was not made in good faith, the company shall be liable to the insured in an amount double the
 98 amount otherwise due and payable under the provisions of the insured's policy of motor vehicle
 99 insurance of the judgment, plus interest from 30 days after the date the claim was submitted in writing to
 100 the insurer or its authorized agent, together with reasonable attorney's attorney fees and expenses.

101 The provisions of this subsection shall be construed to include an insurance company's refusal or
 102 failure to pay medical expenses to persons covered under the terms of any medical payments coverage
 103 extended under a policy of motor vehicle insurance, when the amount of the claim therefor is \$3,500 or
 104 less and the refusal was not made in good faith.

105 B. Notwithstanding the provisions of subsection A, whenever any insurance company licensed in this
 106 Commonwealth to write insurance as defined in § 38.2-124 denies, refuses or fails to pay to a third
 107 party claimant, on behalf of an insured to whom such company has issued a policy of motor vehicle
 108 liability insurance, a claim of \$3,500 or less made by such third party claimant and if the judge of a
 109 court of proper jurisdiction finds that the insured is liable for the claim, the third party claimant shall
 110 have a cause of action against the insurance company. If the judge finds that such denial, refusal or
 111 failure to pay was not made in good faith, the company, in addition to the liability assumed by the
 112 company under the provisions of the insured's policy of motor vehicle liability insurance, shall be liable
 113 to the third party claimant in an amount double the amount of the judgment awarded the third party
 114 claimant, together with reasonable attorney's attorney fees and expenses.

115 C. Notwithstanding the provisions of subsections A and B, whenever any person who has furnished
 116 proof of financial responsibility in lieu of obtaining a policy or policies of motor vehicle liability
 117 insurance pursuant to the provisions of Title 46.2 or any person who is required and has failed to
 118 furnish such proof pursuant to the provisions of Title 46.2 denies, refuses, or fails to pay to a claimant a
 119 claim of \$3,500 or less made by such claimant as a result of a motor vehicle accident, and if the trial
 120 judge of a court of proper jurisdiction finds that such denial, refusal, or failure to pay was not made in
 121 good faith, such person shall be liable to the claimant in an amount double the amount otherwise due

122 and payable of the judgment, together with reasonable attorney fees and expenses.

123 For the purposes of this subsection, "person" means and includes any natural person, firm,
124 partnership, association, or corporation.

125 D. 1. Whenever a court of proper jurisdiction finds that an insurance company licensed in this
126 Commonwealth to write insurance as defined in § 38.2-124 denies, refuses or fails to pay to its insured a
127 claim of more than \$3,500 in excess of the deductible, if any, under the provisions of a policy of motor
128 vehicle insurance issued by such company to the insured, and it is subsequently found by the judge of a
129 court of proper jurisdiction that such denial, refusal or failure to pay was not made in good faith, the
130 company shall be liable to the insured in the amount otherwise due and payable under the provisions of
131 the insured's policy of motor vehicle insurance, plus interest on the amount due at double the rate
132 provided in § 6.2-301 from the date that the claim was submitted to the insurer or its authorized agent,
133 together with reasonable attorney's fees and expenses.

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

137 *Whenever any insurance company licensed in the Commonwealth to write motor vehicle insurance as*
138 *defined in § 38.2-124 (i) denies, refuses, fails to pay, or fails to make a timely and reasonable settlement*
139 *offer to its insured under the provisions of any uninsured or underinsured motorist benefits coverage in*
140 *a policy of motor vehicle insurance applicable to the insured after the insured has become legally*
141 *entitled to recover or (ii) after all applicable liability policy limits and underlying uninsured and*
142 *underinsured motorists benefits have been tendered or paid, rejects a reasonable settlement demand*
143 *made by the insured within the policy's coverage limits for uninsured or underinsured motorist benefits*
144 *or fails to respond within a reasonable time after being presented with such demand after the insured*
145 *has become legally entitled to recover, and it is subsequently found by a court of proper jurisdiction*
146 *that such denial, refusal, or failure to timely pay or failure to make a timely and reasonable settlement*
147 *offer, rejection of a reasonable settlement demand, or failure to timely accept a reasonable settlement*
148 *demand was not made in good faith, in addition to the amount due and owing by the insurance*
149 *company to its insured on the judgment against the tortfeasor, the insurance company shall also be*
150 *liable to the insured in an amount double the amount of the judgment obtained against the underinsured*
151 *motorist, uninsured motorist, immune motorist, unknown owner or operator, or released defendant in the*
152 *underlying personal injury or wrongful death action, up to \$500,000, together with reasonable attorney*
153 *fees for bringing a claim under this subsection, and all costs and expenses incurred by the insured to*
154 *secure a judgment against the tortfeasor, and interest from 30 days after the date of such denial or*
155 *failure or the date the reasonable settlement demand was submitted in writing. The insured or the*
156 *insured's representative may seek adjudication of a claim that the insurance company did not act in*
157 *good faith as a posttrial motion before the court in which the underlying personal injury or wrongful*
158 *death judgment was obtained or as a separate action against the company. If the insured or the*
159 *insured's representative seeks adjudication as a separate action and the underlying judgment is*
160 *appealed, any action filed under this subsection shall be stayed by the court pending final resolution of*
161 *the appeal of the underlying judgment.*

162 *For the purposes of this section, the term "legally entitled to recover" means the point in time when*
163 *liability to the uninsured or underinsured motorist insurance company's insured has become reasonably*
164 *foreseeable without necessity of a judgment by its insured against an uninsured or underinsured*
165 *motorist, an unknown owner or operator, or an immune motorist.*

166 **§ 38.2-2206. Uninsured motorist insurance coverage.**

167 A. Except as provided in subsection J, no policy or contract of bodily injury or property damage
168 liability insurance relating to the ownership, maintenance, or use of a motor vehicle shall be issued or
169 delivered in this Commonwealth to the owner of such vehicle or shall be issued or delivered by any
170 insurer licensed in this Commonwealth upon any motor vehicle principally garaged or used in this
171 Commonwealth unless it contains an endorsement or provisions undertaking to pay the insured all sums
172 that he is legally entitled to recover as damages from the owner or operator of an uninsured motor
173 vehicle, within limits not less than the requirements of § 46.2-472. Those limits shall equal but not
174 exceed the limits of the liability insurance provided by the policy, unless any one named insured rejects
175 the additional uninsured motorist insurance coverage by notifying the insurer as provided in subsection
176 B of § 38.2-2202. This rejection of the additional uninsured motorist insurance coverage by any one
177 named insured shall be binding upon all insureds under such policy. The endorsement or provisions shall
178 also provide underinsured motorist insurance coverage with limits that shall be equal to the uninsured
179 motorist insurance coverage limits and shall obligate the insurer to make payment for bodily injury or
180 property damage caused by the operation or use of an underinsured motor vehicle to the extent the
181 vehicle is underinsured.

182 The endorsement shall provide that underinsured motorist coverage shall be paid without any credit

183 for the bodily injury and property damage coverage available for payment, unless any one named
184 insured signs an election to reduce any underinsured motorist coverage payments by the bodily injury
185 liability or property damage liability coverage available for payment by notifying the insurer as provided
186 in subsection C of § 38.2-2202. This election by any one named insured shall be binding upon all
187 insureds under such policy.

188 The endorsement or provisions shall also provide for at least \$20,000 coverage for damage or
189 destruction of the property of the insured in any one accident but may provide an exclusion of the first
190 \$200 of the loss or damage where the loss or damage is a result of any one accident involving an
191 unidentifiable owner or operator of an uninsured motor vehicle.

192 *For the purposes of this section, "legally entitled to recover" has the same meaning as provided in*
193 *§ 8.01-66.1.*

194 B. 1. As used in this section:

195 "Bodily injury" includes death resulting from bodily injury.

196 "Insured" as used in subsections A, D, G, and H, means the named insured and, while resident of the
197 same household, the spouse of the named insured, and relatives, wards or foster children of either, while
198 in a motor vehicle or otherwise, and any person who uses the motor vehicle to which the policy applies,
199 with the expressed or implied consent of the named insured, and a guest in the motor vehicle to which
200 the policy applies or the personal representative of any of the above.

201 "Uninsured motor vehicle" means a motor vehicle for which (i) there is no bodily injury liability
202 insurance and property damage liability insurance in the amounts specified by § 46.2-472, (ii) there is
203 such insurance but the insurer writing the insurance denies coverage for any reason whatsoever,
204 including failure or refusal of the insured to cooperate with the insurer, (iii) there is no bond or deposit
205 of money or securities in lieu of such insurance, (iv) the owner of the motor vehicle has not qualified as
206 a self-insurer under the provisions of § 46.2-368, or (v) the owner or operator of the motor vehicle is
207 immune from liability for negligence under the laws of the Commonwealth or the United States, in
208 which case the provisions of subsection F shall apply and the action shall continue against the insurer. A
209 motor vehicle shall be deemed uninsured if its owner or operator is unknown.

210 A motor vehicle is "underinsured" when, and to the extent that, the total amount of bodily injury and
211 property damage coverage applicable to the operation or use of the motor vehicle and available for
212 payment for such bodily injury or property damage, including all bonds or deposits of money or
213 securities made pursuant to Article 15 (§ 46.2-435 et seq.) of Chapter 3 of Title 46.2, is less than the
214 total amount of damages sustained up to the total amount of underinsured motorist coverage afforded
215 any person injured as a result of the operation or use of the vehicle.

216 "Available for payment" means the amount of liability insurance coverage applicable to the claim of
217 the injured person for bodily injury or property damage reduced by the payment of any other claims
218 arising out of the same occurrence.

219 2. If an injured person is entitled to uninsured or underinsured motorist coverage under more than
220 one policy, the insurers shall be obligated to the injured person in the following order of priority of
221 payment:

222 a. The policy covering a motor vehicle occupied by the injured person at the time of the accident;

223 b. The policy covering a motor vehicle not involved in the accident under which the injured person
224 is a named insured;

225 c. The policy covering a motor vehicle not involved in the accident under which the injured person
226 is an insured other than a named insured.

227 Where there is more than one insurer providing coverage under one of the payment priorities set
228 forth, their liability shall be proportioned as to their respective available uninsured or underinsured
229 motorist coverages.

230 3. If an injured person is entitled to underinsured motorist coverage under one or more policies
231 wherein a named insured has elected to reduce the underinsured motorist limits by the available bodily
232 injury liability insurance or property damage liability insurance coverage available for payment, any
233 amount available for payment shall be credited against such policies in payment priority pursuant to
234 subdivision 2 a only, and where there is more than one such policy entitled to such credit, the credit
235 shall be apportioned pro-rata pursuant to the policies' respective available underinsured motorist
236 coverages.

237 4. Recovery under the endorsement or provisions shall be subject to the conditions set forth in this
238 section.

239 C. There shall be a rebuttable presumption that a motor vehicle is uninsured if the Commissioner of
240 the Department of Motor Vehicles certifies that, from the records of the Department of Motor Vehicles,
241 it appears that (i) there is no bodily injury liability insurance and property damage liability insurance in
242 the amounts specified by § 46.2-472 covering the owner or operator of the motor vehicle; (ii) no bond
243 has been given or cash or securities delivered in lieu of the insurance; or (iii) the owner or operator of
244 the motor vehicle has not qualified as a self-insurer in accordance with the provisions of § 46.2-368.

245 D. If the owner or operator of any motor vehicle that causes bodily injury or property damage to the
 246 insured is unknown, and if the damage or injury results from an accident where there has been no
 247 contact between that motor vehicle and the motor vehicle occupied by the insured, or where there has
 248 been no contact with the person of the insured if the insured was not occupying a motor vehicle, then
 249 for the insured to recover under the endorsement required by subsection A, the accident shall be
 250 reported promptly to either (i) the insurer or (ii) a law-enforcement officer having jurisdiction in the
 251 county or city in which the accident occurred. If it is not reasonably practicable to make the report
 252 promptly, the report shall be made as soon as reasonably practicable under the circumstances.

253 E. If the owner or operator of any vehicle causing injury or damages is unknown, an action may be
 254 instituted against the unknown defendant as "John Doe" and service of process may be made by
 255 delivering a copy of the motion for judgment or other pleadings to the clerk of the court in which the
 256 action is brought. Service upon the insurer issuing the policy shall be made as prescribed by law as
 257 though the insurer were a party defendant. The provisions of § 8.01-288 shall not be applicable to the
 258 service of process required in this subsection. The insurer shall have the right to file pleadings and take
 259 other action allowable by law in the name of John Doe.

260 F. If any action is instituted against the owner or operator of an uninsured or underinsured motor
 261 vehicle by any insured intending to rely on the uninsured or underinsured coverage provision or
 262 endorsement of this policy under which the insured is making a claim, then the insured shall serve a
 263 copy of the process upon this insurer in the manner prescribed by law, as though the insurer were a
 264 party defendant. The provisions of § 8.01-288 shall not be applicable to the service of process required
 265 in this subsection. The insurer shall then have the right to file pleadings and take other action allowable
 266 by law in the name of the owner or operator of the uninsured or underinsured motor vehicle or in its
 267 own name. Notwithstanding the provisions of subsection A, the immunity from liability for negligence
 268 of the owner or operator of a motor vehicle shall not be a bar to the insured obtaining a judgment
 269 enforceable against the insurer for the negligence of the immune owner or operator, and shall not be a
 270 defense available to the insurer to the action brought by the insured, which shall proceed against the
 271 named defendant although any judgment obtained against an immune defendant shall be entered in the
 272 name of "Immune Defendant" and shall be enforceable against the insurer and any other nonimmune
 273 defendant as though it were entered in the actual name of the named immune defendant. Nothing in this
 274 subsection shall prevent the owner or operator of the uninsured motor vehicle from employing counsel
 275 of his own choice and taking any action in his own interest in connection with the proceeding.

276 G. Any insurer paying a claim under the endorsement or provisions required by subsection A shall
 277 be subrogated to the rights of the insured to whom the claim was paid against the person causing the
 278 injury, death, or damage and that person's insurer, although it may deny coverage for any reason, to the
 279 extent that payment was made. The bringing of an action against the unknown owner or operator as
 280 John Doe or the conclusion of such an action shall not bar the insured from bringing an action against
 281 the owner or operator proceeded against as John Doe, or against the owner's or operator's insurer
 282 denying coverage for any reason, if the identity of the owner or operator who caused the injury or
 283 damages becomes known. The bringing of an action against an unknown owner or operator as John Doe
 284 shall toll the statute of limitations for purposes of bringing an action against the owner or operator who
 285 caused the injury or damages until his identity becomes known. In no event shall an action be brought
 286 against an owner or operator who caused the injury or damages, previously filed against as John Doe,
 287 more than three years from the commencement of the action against the unknown owner or operator as
 288 John Doe in a court of competent jurisdiction. Any recovery against the owner or operator, or the
 289 insurer of the owner or operator shall be paid to the insurer of the injured party to the extent that the
 290 insurer paid the named insured in the action brought against the owner or operator as John Doe.
 291 However, the insurer shall pay its proportionate part of all reasonable costs and expenses incurred in
 292 connection with the action, including reasonable attorney's fees. Nothing in an endorsement or provisions
 293 made under this subsection nor any other provision of law shall prevent the joining in an action against
 294 John Doe of the owner or operator of the motor vehicle causing the injury as a party defendant, and the
 295 joinder is hereby specifically authorized. No action, verdict or release arising out of a suit brought under
 296 this subsection shall give rise to any defenses in any other action brought in the subrogated party's
 297 name, including res judicata and collateral estoppel.

298 H. No endorsement or provisions providing the coverage required by subsection A shall require
 299 arbitration of any claim arising under the endorsement or provisions, nor may anything be required of
 300 the insured except the establishment of legal liability, nor shall the insured be restricted or prevented in
 301 any manner from employing legal counsel or instituting legal proceedings.

302 I. Except as provided in § 65.2-309.1, the provisions of subsections A and B of § 38.2-2204 and the
 303 provisions of subsection A shall not apply to any policy of insurance to the extent that it covers the
 304 liability of an employer under any workers' compensation law, or to the extent that it covers liability to
 305 which the Federal Tort Claims Act applies. No provision or application of this section shall limit the

306 liability of an insurer of motor vehicles to an employee or other insured under this section who is
307 injured by an uninsured motor vehicle; provided that in the event an employee of a self-insured
308 employer receives a workers' compensation award for injuries resulting from an accident with an
309 uninsured motor vehicle, such award shall be set off against any judgment for damages awarded
310 pursuant to this section for personal injuries resulting from such accident.

311 J. Policies of insurance whose primary purpose is to provide coverage in excess of other valid and
312 collectible insurance or qualified self-insurance may include uninsured motorist coverage as provided in
313 subsection A. Insurers issuing or providing liability policies that are of an excess or umbrella type or
314 which provide liability coverage incidental to a policy and not related to a specifically insured motor
315 vehicle, shall not be required to offer, provide or make available to those policies uninsured or
316 underinsured motor vehicle coverage as defined in subsection A.

317 K. An injured person, or in the case of death or disability his personal representative, may settle a
318 claim with (i) a liability insurer, including any insurer providing liability coverage through an excess or
319 umbrella insurance policy or contract and (ii) the liability insurer's insured for the available limits of the
320 liability insurer's coverage. Upon settlement with the liability insurer, the injured party or personal
321 representative shall proceed to execute a full release in favor of the underinsured motorist's liability
322 insurer and its insured and finalize the proposed settlement without prejudice to any underinsured
323 motorist benefits or claim. Any such release that states that it is being executed pursuant to or consistent
324 with this subsection shall not operate to release any parties other than the liability insurer and
325 underinsured motorist, regardless of the identities of the released parties set forth in the release, and any
326 terms contained in the release that are inconsistent with, or in violation of, this section are null and void.
327 Upon payment of the liability insurer's available limits to the injured person or personal representative or
328 his attorney, the liability insurer shall thereafter have no further duties to its insured, including the duty
329 to defend its insured if an action has been or is brought against the liability insurer's insured, and the
330 insurer providing applicable underinsured motorist coverage shall have no right of subrogation or claim
331 against the underinsured motorist. However, if the underinsured motorist unreasonably fails to cooperate
332 with the underinsured motorist benefits insurer in the defense of any lawsuit brought by the injured
333 person or his personal representative, he may again be subjected to a claim for subrogation by the
334 underinsured motorist benefits insurer pursuant to § 8.01-66.1:1. Nothing in this section or § 8.01-66.1:1
335 shall create any duty on the part of any underinsured motorist benefits insurer to defend any
336 underinsured motorist. No attorney-client relationship is created between the underinsured motorist and
337 counsel for the underinsured motorist benefits insurer without the express intent and agreement of the
338 underinsured motorist, the underinsured motorist benefits insurer, and counsel for the underinsured
339 motorist benefits insurer. This section provides an alternative means by which the parties may resolve
340 claims and does not eliminate or restrict any other available means.

341 L. Any settlement between the injured person or his personal representative, any insurer providing
342 liability coverage applicable to the claim, and the underinsured motorist described in subsection K shall
343 be in writing, signed by both the injured person or his personal representative and the underinsured
344 motorist, and shall include the following notice to the underinsured motorist, which must be initialed by
345 the underinsured motorist:

346 "NOTICE TO RELEASED PARTY: Your insurance company has agreed to pay the available limits
347 of its insurance to settle certain claims on your behalf. This settlement secures a full release of you for
348 all claims the claimant/plaintiff has against you arising out of the subject accident, as well as ensures
349 that no judgment can ever be entered against you by the claimant/plaintiff. In order to protect yourself
350 from subrogation by any underinsured motorist insurer, you are agreeing to cooperate with the
351 underinsured motorist benefits insurer(s). The underinsured motorist benefits insurer is not your insurer
352 and has no duty to defend you.

353 Under this manner of settlement, the underinsured motorist benefits insurer(s) that is/are involved in
354 this case has/have no right of subrogation against you unless you fail to reasonably cooperate in its/their
355 defense of the claim by not (i) attending your deposition and trial, if subpoenaed, (ii) assisting in
356 responding to discovery, (iii) meeting with defense counsel at reasonable times after commencement of
357 this suit and before your testimony at a deposition and/or trial, and (iv) notifying the underinsured
358 motorist benefits insurer or its defense counsel of any change in your address, provided that the
359 underinsured motorist benefits insurer or its defense counsel has notified you of its existence and
360 provided you with their contact information.

361 Upon payment of the agreed settlement amount by your insurance company(ies), such company shall
362 no longer owe you any duties, including the duty to hire and pay for an attorney for you. You are not
363 required to consent to settlement in this manner. If you do not consent to settlement in this manner,
364 your insurance company will still defend you in any lawsuit brought against you by the
365 claimant/plaintiff, but you will not have the protections of a full release from the claimant/plaintiff,
366 judgment could be entered against you and may exceed your available insurance coverage, and any
367 underinsured motorist benefits insurer would have a right of subrogation against you to recover any

368 moneys it pays to the claimant/plaintiff.

369 You are encouraged to discuss your rights and obligations related to settlement in this manner with
370 your insurance company and/or an attorney. By signing this document, you agree to consent to this
371 settlement and to reasonably cooperate with the underinsured motorist benefits insurer in the defense of
372 any lawsuit brought by the claimant/plaintiff.

373 _____ (initial)"

374 In the alternative to having the underinsured motorist sign the release and initial the notice, the
375 liability insurer may send the notice and release to the underinsured motorist by certified mail return
376 receipt requested to his last known address, which will be deemed to have satisfied the requirements of
377 this subsection.

378 M. Any action brought by the injured person or his personal representative to recover underinsured
379 motorist benefits after payment of the liability insurer's available limits pursuant to subsection K shall be
380 brought against the released defendant, and a copy of the complaint shall be served on any insurer
381 providing underinsured motorist benefits. If an action is pending at the time the liability insurer's
382 available limits are paid to the injured person or personal representative or his attorney, then the action
383 shall remain pending against the named defendant or defendants who have been released. If such action
384 results in a verdict in favor of the injured person or his personal representative against a released
385 defendant, then judgment as to that defendant shall be entered in the name of "Released Defendant" and
386 shall be enforceable against the underinsured motorist benefits insurer, not to exceed the underinsured
387 motorist benefits limits, and against any unreleased defendant, as though it were entered in the actual
388 name of the released defendant.

389 N. Any proposed settlement between a liability insurer and a person under a disability or a personal
390 representative as permitted in subsection K that compromises in part a claim for personal injuries by the
391 person under a disability or for death by wrongful act pursuant to § 8.01-50 may be, but is not required
392 to be, approved pursuant to § 8.01-424 or 8.01-55, as applicable. If the personal representative elects not
393 to have the settlement with the liability insurer approved pursuant to § 8.01-55, then any payment made
394 to the personal representative by the liability insurer shall be made payable to the personal
395 representative's attorney, to be held in trust, or paid into the court pursuant to § 8.01-600 if the personal
396 representative is not represented by an attorney, with no disbursements made therefrom until the
397 compromise is approved by the court pursuant to § 8.01-55. Approval by the court of a settlement
398 between the liability insurer and a person under a disability or the personal representative pursuant to
399 this subsection shall not prejudice the person's or personal representative's claim for underinsured
400 motorist benefits.

401 **2. That the provisions of this act amending subsection D of § 8.01-66.1, as it is currently effective**
402 **and as it shall become effective, of the Code of Virginia, as amended by this act, shall apply to**
403 **any claim for personal injury or wrongful death arising out of a motor vehicle accident that occur**
404 **on or after July 1, 2024.**