

SENATE BILL NO. 256

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Commerce and Labor

on \_\_\_\_\_)

(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 the date the claim was submitted 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.~~

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

37 C. Notwithstanding the provisions of subsections A and B whenever any person who has paid a  
38 fee to the Department of Motor Vehicles to register an uninsured motor vehicle pursuant to § 46.2-706 or  
39 any person who has furnished proof of financial responsibility in lieu of obtaining a policy or policies of  
40 motor vehicle liability insurance pursuant to the provisions of Title 46.2 or any person who is required  
41 and has failed either to pay such fee or to furnish such proof pursuant to the provisions of Title 46.2 denies,  
42 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  
43 vehicle accident; and if the trial judge of a court of proper jurisdiction finds that such denial, refusal or  
44 failure to pay was not made in good faith, such person shall be liable to the claimant in an amount double  
45 the amount ~~otherwise due and payable~~ of the judgment, together with reasonable ~~attorney's~~ attorney fees  
46 and expenses.

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

49 ~~D. 1. Whenever a court of proper jurisdiction finds that an insurance company licensed in this~~  
50 ~~Commonwealth to write insurance as defined in § 38.2-124 denies, refuses or fails to pay to its insured a~~  
51 ~~claim of more than \$3,500 in excess of the deductible, if any, under the provisions of a policy of motor~~  
52 ~~vehicle insurance issued by such company to the insured and it is subsequently found by the judge of a~~  
53 ~~court of proper jurisdiction that such denial, refusal or failure to pay was not made in good faith, the~~

54 ~~company shall be liable to the insured in the amount otherwise due and payable under the provisions of~~  
55 ~~the insured's policy of motor vehicle insurance, plus interest on the amount due at double the rate provided~~  
56 ~~in § 6.2-301 from the date that the claim was submitted to the insurer or its authorized agent, together with~~  
57 ~~reasonable attorney's fees and expenses.~~

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

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

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

85 **§ 8.01-66.1. (Effective July 1, 2024) Remedy for arbitrary refusal of motor vehicle insurance**  
 86 **claim.**

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

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

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

108 claimant in an amount double the amount of the judgment awarded the third party claimant, together with  
109 reasonable ~~attorney's~~ attorney fees and expenses.

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

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

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

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

132 Whenever any insurance company licensed in the Commonwealth to write motor vehicle insurance  
133 as defined in § 38.2-124 (i) denies, refuses, fails to pay, or fails to make a timely and reasonable settlement  
134 offer to its insured under the provisions of any uninsured or underinsured motorist benefits coverage in a

135 policy of motor vehicle insurance applicable to the insured after the insured has become legally entitled  
136 to recover or (ii) rejects a reasonable settlement demand made by the insured within the policy's coverage  
137 limits for uninsured or underinsured motorist benefits or fails to respond within a reasonable time after  
138 being presented with such demand after the insured has become legally entitled to recover, and it is  
139 subsequently found by a court of proper jurisdiction that such denial, refusal, or failure to timely pay or  
140 failure to make a timely and reasonable settlement offer, rejection of a reasonable settlement demand, or  
141 failure to timely accept a reasonable settlement demand was not made in good faith, in addition to the  
142 amount due and owing by the insurance company to its insured on the judgment against the tortfeasor, the  
143 insurance company shall also be liable to the insured in an amount double the amount of the judgment  
144 obtained against the underinsured motorist, uninsured motorist, immune motorist, unknown owner or  
145 operator, or released defendant in the underlying personal injury or wrongful death action, up to \$500,000,  
146 together with reasonable attorney fees for bringing a claim under this subsection, and all costs and  
147 expenses incurred by the insured to secure a judgment against the tortfeasor, and interest from the date of  
148 such denial or failure or from the date of the reasonable settlement demand. The insured or the insured's  
149 representative may seek adjudication of a claim that the insurance company did not act in good faith as a  
150 posttrial motion before the court in which the underlying personal injury or wrongful death judgment was  
151 obtained or as a separate action against the company.

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

156 **§ 38.2-2206. Uninsured motorist insurance coverage.**

157 A. Except as provided in subsection J, no policy or contract of bodily injury or property damage  
158 liability insurance relating to the ownership, maintenance, or use of a motor vehicle shall be issued or  
159 delivered in this Commonwealth to the owner of such vehicle or shall be issued or delivered by any insurer  
160 licensed in this Commonwealth upon any motor vehicle principally garaged or used in this  
161 Commonwealth unless it contains an endorsement or provisions undertaking to pay the insured all sums

162 that he is legally entitled to recover as damages from the owner or operator of an uninsured motor vehicle,  
163 within limits not less than the requirements of § 46.2-472. Those limits shall equal but not exceed the  
164 limits of the liability insurance provided by the policy, unless any one named insured rejects the additional  
165 uninsured motorist insurance coverage by notifying the insurer as provided in subsection B of § 38.2-  
166 2202. This rejection of the additional uninsured motorist insurance coverage by any one named insured  
167 shall be binding upon all insureds under such policy. The endorsement or provisions shall also provide  
168 underinsured motorist insurance coverage with limits that shall be equal to the uninsured motorist  
169 insurance coverage limits and shall obligate the insurer to make payment for bodily injury or property  
170 damage caused by the operation or use of an underinsured motor vehicle to the extent the vehicle is  
171 underinsured.

172 The endorsement shall provide that underinsured motorist coverage shall be paid without any  
173 credit for the bodily injury and property damage coverage available for payment, unless any one named  
174 insured signs an election to reduce any underinsured motorist coverage payments by the bodily injury  
175 liability or property damage liability coverage available for payment by notifying the insurer as provided  
176 in subsection C of § 38.2-2202. This election by any one named insured shall be binding upon all insureds  
177 under such policy.

178 The endorsement or provisions shall also provide for at least \$20,000 coverage for damage or  
179 destruction of the property of the insured in any one accident but may provide an exclusion of the first  
180 \$200 of the loss or damage where the loss or damage is a result of any one accident involving an  
181 unidentifiable owner or operator of an uninsured motor vehicle.

182 For the purposes of this section, "legally entitled to recover" has the same meaning as provided in  
183 § 8.01-66.1.

184 B. 1. As used in this section:

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

186 "Insured" as used in subsections A, D, G, and H, means the named insured and, while resident of  
187 the same household, the spouse of the named insured, and relatives, wards or foster children of either,  
188 while in a motor vehicle or otherwise, and any person who uses the motor vehicle to which the policy

189 applies, with the expressed or implied consent of the named insured, and a guest in the motor vehicle to  
190 which the policy applies or the personal representative of any of the above.

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

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

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

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

- 212 a. The policy covering a motor vehicle occupied by the injured person at the time of the accident;
- 213 b. The policy covering a motor vehicle not involved in the accident under which the injured person  
214 is a named insured;



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

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

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

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

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

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

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

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

265 G. Any insurer paying a claim under the endorsement or provisions required by subsection A shall  
266 be subrogated to the rights of the insured to whom the claim was paid against the person causing the injury,  
267 death, or damage and that person's insurer, although it may deny coverage for any reason, to the extent  
268 that payment was made. The bringing of an action against the unknown owner or operator as John Doe or

269 the conclusion of such an action shall not bar the insured from bringing an action against the owner or  
270 operator proceeded against as John Doe, or against the owner's or operator's insurer denying coverage for  
271 any reason, if the identity of the owner or operator who caused the injury or damages becomes known.  
272 The bringing of an action against an unknown owner or operator as John Doe shall toll the statute of  
273 limitations for purposes of bringing an action against the owner or operator who caused the injury or  
274 damages until his identity becomes known. In no event shall an action be brought against an owner or  
275 operator who caused the injury or damages, previously filed against as John Doe, more than three years  
276 from the commencement of the action against the unknown owner or operator as John Doe in a court of  
277 competent jurisdiction. Any recovery against the owner or operator, or the insurer of the owner or operator  
278 shall be paid to the insurer of the injured party to the extent that the insurer paid the named insured in the  
279 action brought against the owner or operator as John Doe. However, the insurer shall pay its proportionate  
280 part of all reasonable costs and expenses incurred in connection with the action, including reasonable  
281 attorney's fees. Nothing in an endorsement or provisions made under this subsection nor any other  
282 provision of law shall prevent the joining in an action against John Doe of the owner or operator of the  
283 motor vehicle causing the injury as a party defendant, and the joinder is hereby specifically authorized.  
284 No action, verdict or release arising out of a suit brought under this subsection shall give rise to any  
285 defenses in any other action brought in the subrogated party's name, including res judicata and collateral  
286 estoppel.

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

291 I. Except as provided in § 65.2-309.1, the provisions of subsections A and B of § 38.2-2204 and  
292 the provisions of subsection A shall not apply to any policy of insurance to the extent that it covers the  
293 liability of an employer under any workers' compensation law, or to the extent that it covers liability to  
294 which the Federal Tort Claims Act applies. No provision or application of this section shall limit the  
295 liability of an insurer of motor vehicles to an employee or other insured under this section who is injured

296 by an uninsured motor vehicle; provided that in the event an employee of a self-insured employer receives  
297 a workers' compensation award for injuries resulting from an accident with an uninsured motor vehicle,  
298 such award shall be set off against any judgment for damages awarded pursuant to this section for personal  
299 injuries resulting from such accident.

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

306 K. An injured person, or in the case of death or disability his personal representative, may settle a  
307 claim with (i) a liability insurer, including any insurer providing liability coverage through an excess or  
308 umbrella insurance policy or contract and (ii) the liability insurer's insured for the available limits of the  
309 liability insurer's coverage. Upon settlement with the liability insurer, the injured party or personal  
310 representative shall proceed to execute a full release in favor of the underinsured motorist's liability insurer  
311 and its insured and finalize the proposed settlement without prejudice to any underinsured motorist  
312 benefits or claim. Any such release that states that it is being executed pursuant to or consistent with this  
313 subsection shall not operate to release any parties other than the liability insurer and underinsured motorist,  
314 regardless of the identities of the released parties set forth in the release, and any terms contained in the  
315 release that are inconsistent with, or in violation of, this section are null and void. Upon payment of the  
316 liability insurer's available limits to the injured person or personal representative or his attorney, the  
317 liability insurer shall thereafter have no further duties to its insured, including the duty to defend its insured  
318 if an action has been or is brought against the liability insurer's insured, and the insurer providing  
319 applicable underinsured motorist coverage shall have no right of subrogation or claim against the  
320 underinsured motorist. However, if the underinsured motorist unreasonably fails to cooperate with the  
321 underinsured motorist benefits insurer in the defense of any lawsuit brought by the injured person or his  
322 personal representative, he may again be subjected to a claim for subrogation by the underinsured motorist

323 benefits insurer pursuant to § 8.01-66.1:1. Nothing in this section or § 8.01-66.1:1 shall create any duty  
324 on the part of any underinsured motorist benefits insurer to defend any underinsured motorist. No attorney-  
325 client relationship is created between the underinsured motorist and counsel for the underinsured motorist  
326 benefits insurer without the express intent and agreement of the underinsured motorist, the underinsured  
327 motorist benefits insurer, and counsel for the underinsured motorist benefits insurer. This section provides  
328 an alternative means by which the parties may resolve claims and does not eliminate or restrict any other  
329 available means.

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

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

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

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

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

362           \_\_\_\_\_ (initial)"

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

367           M. Any action brought by the injured person or his personal representative to recover underinsured  
368 motorist benefits after payment of the liability insurer's available limits pursuant to subsection K shall be  
369 brought against the released defendant, and a copy of the complaint shall be served on any insurer  
370 providing underinsured motorist benefits. If an action is pending at the time the liability insurer's available  
371 limits are paid to the injured person or personal representative or his attorney, then the action shall remain  
372 pending against the named defendant or defendants who have been released. If such action results in a  
373 verdict in favor of the injured person or his personal representative against a released defendant, then  
374 judgment as to that defendant shall be entered in the name of "Released Defendant" and shall be  
375 enforceable against the underinsured motorist benefits insurer, not to exceed the underinsured motorist

376 benefits limits, and against any unreleased defendant, as though it were entered in the actual name of the  
377 released defendant.

378 N. Any proposed settlement between a liability insurer and a person under a disability or a personal  
379 representative as permitted in subsection K that compromises in part a claim for personal injuries by the  
380 person under a disability or for death by wrongful act pursuant to § 8.01-50 may be, but is not required to  
381 be, approved pursuant to § 8.01-424 or 8.01-55, as applicable. If the personal representative elects not to  
382 have the settlement with the liability insurer approved pursuant to § 8.01-55, then any payment made to  
383 the personal representative by the liability insurer shall be made payable to the personal representative's  
384 attorney, to be held in trust, or paid into the court pursuant to § 8.01-600 if the personal representative is  
385 not represented by an attorney, with no disbursements made therefrom until the compromise is approved  
386 by the court pursuant to § 8.01-55. Approval by the court of a settlement between the liability insurer and  
387 a person under a disability or the personal representative pursuant to this subsection shall not prejudice  
388 the person's or personal representative's claim for underinsured motorist benefits.

389 **2. That the provisions of subsection D of § 8.01-66.1, as it is currently effective and as it shall become**  
390 **effective, of the Code of Virginia, as amended by this act, shall apply to any claim for personal injury**  
391 **or wrongful death arising out of acts or occurrences that occur on or after July 1, 2024.**

392 #