

# 2025 SESSION

INTRODUCED

25104151D

1 **HOUSE BILL NO. 2492**

2 Offered January 13, 2025

3 Prefiled January 8, 2025

4 A BILL to amend and reenact § 38.2-2206 of the Code of Virginia and to amend the Code of Virginia by  
5 adding a section numbered 8.01-65.1, relating to motor vehicle accidents; actions brought by uninsured  
6 motorists; limited damages.

7 Patron—Zehr

8 Referred to Committee for Courts of Justice

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

10 **1. That § 38.2-2206 of the Code of Virginia is amended and reenacted and that the Code of Virginia is  
11 amended by adding a section numbered 8.01-65.1 as follows:**

12 **§ 8.01-65.1. Actions brought by uninsured motorists; limited damages for personal injury and property  
13 damage claims.**

14 **A. In either a (i) personal injury action wherein the injured person involved in a motor vehicle accident is  
15 the owner or operator of an uninsured motor vehicle or (ii) property damage claim wherein the person whose  
16 property was damaged in a motor vehicle accident is the owner or operator of an uninsured motor vehicle,  
17 such person shall be barred from recovering the first \$25,000 in damages. For the purposes of this section,  
18 "uninsured motor vehicle" means the same as that term is defined in § 38.2-2206.**

19 **B. The provisions of this section shall not apply if (i) the motor vehicle accident giving rise to such injury  
20 or damage occurred when the tortfeasor was driving under the influence of drugs, alcohol, or a combination  
21 thereof in violation of Article 2 (§ 18.2-266 et seq.) of Chapter 7 of Title 18.2; (ii) the tortfeasor violated the  
22 duty set forth in § 46.2-894 after such accident; or (iii) the injury or damage was a result of an intentional  
23 act taken by the tortfeasor to injure the person or damage such person's property.**

24 **§ 38.2-2206. Uninsured motorist insurance coverage.**

25 **A. Except as provided in subsection J, no policy or contract of bodily injury or property damage liability  
26 insurance relating to the ownership, maintenance, or use of a motor vehicle shall be issued or delivered in this  
27 Commonwealth to the owner of such vehicle or shall be issued or delivered by any insurer licensed in this  
28 Commonwealth upon any motor vehicle principally garaged or used in this Commonwealth unless it contains  
29 an endorsement or provisions undertaking to pay the insured all sums that he is legally entitled to recover as  
30 damages from the owner or operator of an uninsured motor vehicle, within limits not less than the  
31 requirements of § 46.2-472. Those limits shall equal but not exceed the limits of the liability insurance  
32 provided by the policy, unless any one named insured rejects the additional uninsured motorist insurance  
33 coverage by notifying the insurer as provided in subsection B of § 38.2-2202. This rejection of the additional  
34 uninsured motorist insurance coverage by any one named insured shall be binding upon all insureds under  
35 such policy. The endorsement or provisions shall also provide underinsured motorist insurance coverage with  
36 limits that shall be equal to the uninsured motorist insurance coverage limits and shall obligate the insurer to  
37 make payment for bodily injury or property damage caused by the operation or use of an underinsured motor  
38 vehicle to the extent the vehicle is underinsured.**

39 **The endorsement shall provide that underinsured motorist coverage shall be paid without any credit for  
40 the bodily injury and property damage coverage available for payment, unless any one named insured signs  
41 an election to reduce any underinsured motorist coverage payments by the bodily injury liability or property  
42 damage liability coverage available for payment by notifying the insurer as provided in subsection C of §  
43 38.2-2202. This election by any one named insured shall be binding upon all insureds under such policy.**

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

48 **For the purposes of this section, "legally entitled to recover" has the same meaning as provided in §  
49 8.01-66.1.**

50 **B. 1. As used in this section:**

51 **"Bodily injury" includes death resulting from bodily injury.**

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

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59        "Uninsured motor vehicle" means a motor vehicle for which (i) there is no bodily injury liability insurance  
60 and property damage liability insurance in the amounts specified by § 46.2-472, (ii) there is such insurance  
61 but the insurer writing the insurance denies coverage for any reason whatsoever, including failure or refusal  
62 of the insured to cooperate with the insurer, (iii) there is no bond or deposit of money or securities in lieu of  
63 such insurance, (iv) the owner of the motor vehicle has not qualified as a self-insurer under the provisions of  
64 § 46.2-368, or (v) the owner or operator of the motor vehicle is immune from liability for negligence under  
65 the laws of the Commonwealth or the United States, in which case the provisions of subsection F shall apply  
66 and the action shall continue against the insurer. A motor vehicle shall be deemed uninsured if its owner or  
67 operator is unknown.

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

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

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

- 79        a. The policy covering a motor vehicle occupied by the injured person at the time of the accident;
- 80        b. The policy covering a motor vehicle not involved in the accident under which the injured person is a  
81 named insured;
- 82        c. The policy covering a motor vehicle not involved in the accident under which the injured person is an  
83 insured other than a named insured.

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

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

93        4. Recovery under the endorsement or provisions shall be subject to the conditions set forth in this section  
94 and § 8.01-65.1.

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

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

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

116        F. If any action is instituted against the owner or operator of an uninsured or underinsured motor vehicle  
117 by any insured intending to rely on the uninsured or underinsured coverage provision or endorsement of this  
118 policy under which the insured is making a claim, then the insured shall serve a copy of the process upon this  
119 insurer in the manner prescribed by law, as though the insurer were a party defendant. The provisions of §

120 8.01-288 shall not be applicable to the service of process required in this subsection. The insurer shall then  
 121 have the right to file pleadings and take other action allowable by law in the name of the owner or operator of  
 122 the uninsured or underinsured motor vehicle or in its own name. Notwithstanding the provisions of  
 123 subsection A, the immunity from liability for negligence of the owner or operator of a motor vehicle shall not  
 124 be a bar to the insured obtaining a judgment enforceable against the insurer for the negligence of the immune  
 125 owner or operator, and shall not be a defense available to the insurer to the action brought by the insured,  
 126 which shall proceed against the named defendant although any judgment obtained against an immune  
 127 defendant shall be entered in the name of "Immune Defendant" and shall be enforceable against the insurer  
 128 and any other nonimmune defendant as though it were entered in the actual name of the named immune  
 129 defendant. Nothing in this subsection shall prevent the owner or operator of the uninsured motor vehicle from  
 130 employing counsel of his own choice and taking any action in his own interest in connection with the  
 131 proceeding.

132 G. Any insurer paying a claim under the endorsement or provisions required by subsection A shall be  
 133 subrogated to the rights of the insured to whom the claim was paid against the person causing the injury,  
 134 death, or damage and that person's insurer, although it may deny coverage for any reason, to the extent that  
 135 payment was made. The bringing of an action against the unknown owner or operator as John Doe or the  
 136 conclusion of such an action shall not bar the insured from bringing an action against the owner or operator  
 137 proceeded against as John Doe, or against the owner's or operator's insurer denying coverage for any reason,  
 138 if the identity of the owner or operator who caused the injury or damages becomes known. The bringing of an  
 139 action against an unknown owner or operator as John Doe shall toll the statute of limitations for purposes of  
 140 bringing an action against the owner or operator who caused the injury or damages until his identity becomes  
 141 known. In no event shall an action be brought against an owner or operator who caused the injury or  
 142 damages, previously filed against as John Doe, more than three years from the commencement of the action  
 143 against the unknown owner or operator as John Doe in a court of competent jurisdiction. Any recovery  
 144 against the owner or operator, or the insurer of the owner or operator shall be paid to the insurer of the injured  
 145 party to the extent that the insurer paid the named insured in the action brought against the owner or operator  
 146 as John Doe. However, the insurer shall pay its proportionate part of all reasonable costs and expenses  
 147 incurred in connection with the action, including reasonable attorney fees. Nothing in an endorsement or  
 148 provisions made under this subsection nor any other provision of law shall prevent the joining in an action  
 149 against John Doe of the owner or operator of the motor vehicle causing the injury as a party defendant, and  
 150 the joinder is hereby specifically authorized. No action, verdict or release arising out of a suit brought under  
 151 this subsection shall give rise to any defenses in any other action brought in the subrogated party's name,  
 152 including res judicata and collateral estoppel.

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

157 I. Except as provided in § 65.2-309.1, the provisions of subsections A and B of § 38.2-2204 and the  
 158 provisions of subsection A shall not apply to any policy of insurance to the extent that it covers the liability of  
 159 an employer under any workers' compensation law, or to the extent that it covers liability to which the  
 160 Federal Tort Claims Act applies. No provision or application of this section shall limit the liability of an  
 161 insurer of motor vehicles to an employee or other insured under this section who is injured by an uninsured  
 162 motor vehicle; provided that in the event an employee of a self-insured employer receives a workers'  
 163 compensation award for injuries resulting from an accident with an uninsured motor vehicle, such award shall  
 164 be set off against any judgment for damages awarded pursuant to this section for personal injuries resulting  
 165 from such accident.

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

172 K. An injured person, or in the case of death or disability his personal representative, may settle a claim  
 173 with (i) a liability insurer, including any insurer providing liability coverage through an excess or umbrella  
 174 insurance policy or contract and (ii) the liability insurer's insured for the available limits of the liability  
 175 insurer's coverage. Upon settlement with the liability insurer, the injured party or personal representative shall  
 176 proceed to execute a full release in favor of the underinsured motorist's liability insurer and its insured and  
 177 finalize the proposed settlement without prejudice to any underinsured motorist benefits or claim. Any such  
 178 release that states that it is being executed pursuant to or consistent with this subsection shall not operate to  
 179 release any parties other than the liability insurer and underinsured motorist, regardless of the identities of the  
 180 released parties set forth in the release, and any terms contained in the release that are inconsistent with, or in

181 violation of, this section are null and void. Upon payment of the liability insurer's available limits to the  
182 injured person or personal representative or his attorney, the liability insurer shall thereafter have no further  
183 duties to its insured, including the duty to defend its insured if an action has been or is brought against the  
184 liability insurer's insured, and the insurer providing applicable underinsured motorist coverage shall have no  
185 right of subrogation or claim against the underinsured motorist. However, if the underinsured motorist  
186 unreasonably fails to cooperate with the underinsured motorist benefits insurer in the defense of any lawsuit  
187 brought by the injured person or his personal representative, he may again be subjected to a claim for  
188 subrogation by the underinsured motorist benefits insurer pursuant to § 8.01-66.1:1. Nothing in this section or  
189 § 8.01-66.1:1 shall create any duty on the part of any underinsured motorist benefits insurer to defend any  
190 underinsured motorist. No attorney-client relationship is created between the underinsured motorist and  
191 counsel for the underinsured motorist benefits insurer without the express intent and agreement of the  
192 underinsured motorist, the underinsured motorist benefits insurer, and counsel for the underinsured motorist  
193 benefits insurer. This section provides an alternative means by which the parties may resolve claims and does  
194 not eliminate or restrict any other available means.

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

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

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

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

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

224 \_\_\_\_\_ (initial)

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

228 M. Any action brought by the injured person or his personal representative to recover underinsured  
229 motorist benefits after payment of the liability insurer's available limits pursuant to subsection K shall be  
230 brought against the released defendant, and a copy of the complaint shall be served on any insurer providing  
231 underinsured motorist benefits. If an action is pending at the time the liability insurer's available limits are  
232 paid to the injured person or personal representative or his attorney, then the action shall remain pending  
233 against the named defendant or defendants who have been released. If such action results in a verdict in favor  
234 of the injured person or his personal representative against a released defendant, then judgment as to that  
235 defendant shall be entered in the name of "Released Defendant" and shall be enforceable against the  
236 underinsured motorist benefits insurer, not to exceed the underinsured motorist benefits limits, and against  
237 any unreleased defendant, as though it were entered in the actual name of the released defendant.

238 N. Any proposed settlement between a liability insurer and a person under a disability or a personal  
239 representative as permitted in subsection K that compromises in part a claim for personal injuries by the  
240 person under a disability or for death by wrongful act pursuant to § 8.01-50 may be, but is not required to be,  
241 approved pursuant to § 8.01-424 or 8.01-55, as applicable. If the personal representative elects not to have the

242 settlement with the liability insurer approved pursuant to § 8.01-55, then any payment made to the personal  
243 representative by the liability insurer shall be made payable to the personal representative's attorney, to be  
244 held in trust, or paid into the court pursuant to § 8.01-600 if the personal representative is not represented by  
245 an attorney, with no disbursements made therefrom until the compromise is approved by the court pursuant to  
246 § 8.01-55. Approval by the court of a settlement between the liability insurer and a person under a disability  
247 or the personal representative pursuant to this subsection shall not prejudice the person's or personal  
248 representative's claim for underinsured motorist benefits.

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