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HOUSE BILL NO. 808
AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the Senate Committee on Commerce and Labor
on _____)
(Patron Prior to Substitute—Delegate Helmer)

A BILL to amend and reenact § 38.2-510 of the Code of Virginia, relating to insurance; unfair claim settlement practices; modification of loss estimate.

Be it enacted by the General Assembly of Virginia:

1. That § 38.2-510 of the Code of Virginia is amended and reenacted as follows:

§ 38.2-510. Unfair claim settlement practices.

A. No person shall commit or perform with such frequency as to indicate a general business practice any of the following:

- 1. Misrepresenting pertinent facts or insurance policy provisions relating to coverages at issue;
- 2. Failing to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies;
- 3. Failing to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies;
- 4. Refusing arbitrarily and unreasonably to pay claims;
- 5. Failing to affirm or deny coverage of claims within a reasonable time after proof of loss statements have been completed;
- 6. Not attempting in good faith to make prompt, fair and equitable settlements of claims in which liability has become reasonably clear;
- 7. Compelling insureds to institute litigation to recover amounts due under an insurance policy by offering substantially less than the amounts ultimately recovered in actions brought by such insureds;
- 8. Attempting to settle claims for less than the amount to which a reasonable man would have believed he was entitled by reference to written or printed advertising material accompanying or made part of an application;
- 9. Attempting to settle claims on the basis of an application that was altered without notice to, or knowledge or consent of, the insured;
- 10. Making claims payments to insureds or beneficiaries not accompanied by a statement setting forth the

31 coverage under which payments are being made;

32 11. Making known to insureds or claimants a policy of appealing from arbitration awards in favor of
33 insureds or claimants for the purpose of compelling them to accept settlements or compromises less than the
34 amount awarded in arbitration;

35 12. Delaying the investigation or payment of claims by requiring an insured, a claimant, or the physician
36 of either to submit a preliminary claim report and then requiring the subsequent submission of formal proof
37 of loss forms, when both contain substantially the same information;

38 13. Failing to promptly settle claims where liability has become reasonably clear, under one portion of the
39 insurance policy coverage in order to influence settlements under other portions of the insurance policy
40 coverage;

41 14. Failing to promptly provide a reasonable explanation of the basis in the insurance policy in relation to
42 the facts or applicable law for denial of a claim or for the offer of a compromise settlement;

43 15. Failing to comply with § 38.2-3407.15, or to perform any provider contract provision required by that
44 section;

45 16. Payment to an insurer or its representative by a repair facility, or acceptance by an insurer or its
46 representative from a repair facility, directly or indirectly, of any kickback, rebate, commission, thing of
47 value, or other consideration in connection with such person's appraisal service; or

48 17. Making appraisals of the cost of repairing a motor vehicle that has been damaged as a result of a
49 covered loss unless such appraisal is based upon a personal inspection by a representative of the repair
50 facility or a representative of the insurer who is making the appraisal. Notwithstanding the requirement that
51 an appraisal be based upon a personal inspection, the repair facility or the insurer making the appraisal may
52 prepare an initial, which may be the final, repair appraisal on a motor vehicle that has been damaged as a
53 result of a covered loss either from the representative's personal inspection of the motor vehicle or from
54 photographs, videos, or electronically transmitted digital imagery of the motor vehicle; however, no insurer
55 may require an owner of a motor vehicle to submit photographs, videos, or electronically transmitted digital
56 imagery as a condition of an appraisal. Supplemental repair estimates that become necessary after the repair
57 work has been initiated due to discovery of additional damage to the motor vehicle may also be made from
58 photographs, videos, or electronically transmitted digital imagery of the motor vehicle, provided that in the
59 case of disputed repairs a personal inspection is required.

60 B. No violation of this section shall of itself be deemed to create any cause of action in favor of any
61 person other than the Commission; but nothing in this subsection shall impair the right of any person to seek
62 redress at law or equity for any conduct for which action may be brought.

63 C. 1. No insurer shall prepare or use an estimate of the cost of automobile repairs based on the use of an
64 after market part, as defined herein, unless:

65 The insurer discloses to the claimant in writing either on the estimate or in a separate document attached
66 to the estimate the following information:

67 "THIS ESTIMATE HAS BEEN PREPARED BASED ON THE USE OF AUTOMOBILE PARTS NOT
68 MADE BY THE ORIGINAL MANUFACTURER. PARTS USED IN THE REPAIR OF YOUR VEHICLE
69 BY OTHER THAN THE ORIGINAL MANUFACTURER ARE REQUIRED TO BE AT LEAST EQUAL
70 IN LIKE KIND AND QUALITY IN TERMS OF FIT, QUALITY AND PERFORMANCE TO THE
71 ORIGINAL MANUFACTURER PARTS THEY ARE REPLACING."

72 2. "After market part" as used in this section shall mean an automobile part which is not made by the
73 original equipment manufacturer and which is a sheet metal or plastic part generally constituting the exterior
74 of a motor vehicle, including inner and outer panels.

75 *D. When reducing a loss estimate, no insurer shall alter or amend an insurance adjuster's estimate of*
76 *damages, photographic report data, or narrative report without (i) providing the policyholder with a detailed*
77 *explanation as to why any change that has the effect of reducing the loss estimate was made; (ii) including in*
78 *the report or as an addendum to the report to the policyholder a detailed list of all changes made to the*
79 *report and the identity of the person who made or ordered each such change; and (iii) retaining all versions*
80 *of the report and including within each such version, for each change made within such version of the report,*
81 *the identity of the person that made or ordered such change.*