

## 1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act to amend and reenact § 38.2-510 of the Code of Virginia, relating to insurance; unfair claim*  
 3 *settlement practices; modification of loss estimate.*

4 [H 808]

5 Approved

6 **Be it enacted by the General Assembly of Virginia:**7 **1. That § 38.2-510 of the Code of Virginia is amended and reenacted as follows:**8 **§ 38.2-510. Unfair claim settlement practices.**9 A. No person shall commit or perform with such frequency as to indicate a general business practice any  
 10 of the following:

11 1. Misrepresenting pertinent facts or insurance policy provisions relating to coverages at issue;

12 2. Failing to acknowledge and act reasonably promptly upon communications with respect to claims  
 13 arising under insurance policies;14 3. Failing to adopt and implement reasonable standards for the prompt investigation of claims arising  
 15 under insurance policies;

16 4. Refusing arbitrarily and unreasonably to pay claims;

17 5. Failing to affirm or deny coverage of claims within a reasonable time after proof of loss statements  
 18 have been completed;19 6. Not attempting in good faith to make prompt, fair and equitable settlements of claims in which liability  
 20 has become reasonably clear;21 7. Compelling insureds to institute litigation to recover amounts due under an insurance policy by offering  
 22 substantially less than the amounts ultimately recovered in actions brought by such insureds;23 8. Attempting to settle claims for less than the amount to which a reasonable man would have believed he  
 24 was entitled by reference to written or printed advertising material accompanying or made part of an  
 25 application;26 9. Attempting to settle claims on the basis of an application that was altered without notice to, or  
 27 knowledge or consent of, the insured;28 10. Making claims payments to insureds or beneficiaries not accompanied by a statement setting forth the  
 29 coverage under which payments are being made;30 11. Making known to insureds or claimants a policy of appealing from arbitration awards in favor of  
 31 insureds or claimants for the purpose of compelling them to accept settlements or compromises less than the  
 32 amount awarded in arbitration;33 12. Delaying the investigation or payment of claims by requiring an insured, a claimant, or the physician  
 34 of either to submit a preliminary claim report and then requiring the subsequent submission of formal proof  
 35 of loss forms, when both contain substantially the same information;36 13. Failing to promptly settle claims where liability has become reasonably clear, under one portion of the  
 37 insurance policy coverage in order to influence settlements under other portions of the insurance policy  
 38 coverage;39 14. Failing to promptly provide a reasonable explanation of the basis in the insurance policy in relation to  
 40 the facts or applicable law for denial of a claim or for the offer of a compromise settlement;41 15. Failing to comply with § 38.2-3407.15, or to perform any provider contract provision required by that  
 42 section;43 16. Payment to an insurer or its representative by a repair facility, or acceptance by an insurer or its  
 44 representative from a repair facility, directly or indirectly, of any kickback, rebate, commission, thing of  
 45 value, or other consideration in connection with such person's appraisal service; or46 17. Making appraisals of the cost of repairing a motor vehicle that has been damaged as a result of a  
 47 covered loss unless such appraisal is based upon a personal inspection by a representative of the repair  
 48 facility or a representative of the insurer who is making the appraisal. Notwithstanding the requirement that  
 49 an appraisal be based upon a personal inspection, the repair facility or the insurer making the appraisal may  
 50 prepare an initial, which may be the final, repair appraisal on a motor vehicle that has been damaged as a  
 51 result of a covered loss either from the representative's personal inspection of the motor vehicle or from  
 52 photographs, videos, or electronically transmitted digital imagery of the motor vehicle; however, no insurer  
 53 may require an owner of a motor vehicle to submit photographs, videos, or electronically transmitted digital  
 54 imagery as a condition of an appraisal. Supplemental repair estimates that become necessary after the repair  
 55 work has been initiated due to discovery of additional damage to the motor vehicle may also be made from  
 56 photographs, videos, or electronically transmitted digital imagery of the motor vehicle, provided that in the

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57 case of disputed repairs a personal inspection is required.

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

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

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

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

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

73 D. *When reducing a loss estimate of \$3,000 or more, no insurer shall alter or amend an insurance*  
74 *adjuster's estimate of damages, photographic report data, or narrative report without (i) providing the*  
75 *policyholder with a detailed explanation as to why any change that has the effect of reducing the loss*  
76 *estimate was made; (ii) including in the report or as an addendum to the report to the policyholder a detailed*  
77 *list of all changes made to the report and the identity of the person who made or ordered each such change;*  
78 *and (iii) retaining all versions of the report and including within each such version, for each change made*  
79 *within such version of the report, the identity of the person that made or ordered such change.*