

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend and reenact §§ 38.2-510, 38.2-1331, 38.2-1411.2, 38.2-4214, and 38.2-4319 as it is currently effective and as it may become effective of the Code of Virginia, relating to the insurance laws of the Commonwealth generally.

[S 78]

Approved

Be it enacted by the General Assembly of Virginia:

1. That §§ 38.2-510, 38.2-1331, 38.2-1411.2, 38.2-4214, and 38.2-4319 as it is currently effective and as it may become effective of the Code of Virginia are 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 coverage under which payments are being made;
11. Making known to insureds or claimants a policy of appealing from arbitration awards in favor of insureds or claimants for the purpose of compelling them to accept settlements or compromises less than the amount awarded in arbitration;
12. Delaying the investigation or payment of claims by requiring an insured, a claimant, or the physician of either to submit a preliminary claim report and then requiring the subsequent submission of formal proof of loss forms, when both contain substantially the same information;
13. Failing to promptly settle claims where liability has become reasonably clear, under one portion of the insurance policy coverage in order to influence settlements under other portions of the insurance policy coverage;
14. Failing to promptly provide a reasonable explanation of the basis in the insurance policy in relation to the facts or applicable law for denial of a claim or for the offer of a compromise settlement; or
15. Failing to comply with § 38.2-3407.13 § 38.2-3407.15, or to perform any provider contract provision required by that section.

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

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

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

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

57 PERFORMANCE TO THE ORIGINAL MANUFACTURER PARTS THEY ARE REPLACING."

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

61 § 38.2-1331. Commission approval required for certain transactions.

62 A. Prior written approval of the Commission shall be required for:

63 1. Any material transaction between a domestic insurer and any of its affiliates involving (i) more
64 than either three percent of the insurer's admitted assets or twenty-five percent of the insurer's surplus *to*
65 *policyholders*, whichever is less, as of the immediately preceding December 31 and/or (ii) any
66 reinsurance treaty or risk-sharing arrangement, or modifications thereto, in which the reinsurance
67 premium or anticipated change in the insurer's liabilities equals or exceeds five percent of the insurer's
68 surplus to policyholders reported on the immediately preceding December 31; and/or

69 2. Any investment in affiliated companies if on the date of investment, the sum of the insurer's
70 investments in affiliated companies exceeds or will exceed one or more of the following: fifty percent of
71 the surplus to policyholders reported on the immediately preceding December 31, ten percent of
72 admitted assets reported on the immediately preceding December 31, or fifty percent of the surplus to
73 policyholders at the time application is made to the Commission for approval of the transaction.

74 For the purpose of this section, an insurer's investment in affiliated companies is the sum of (i) the
75 assets held by the insurer that represent securities issued by or, if not in security form, equity or debt
76 interests in companies of the affiliate system; (ii) loans or extensions of credit to any person who is not
77 an affiliate, where the insurer makes such loans or extensions of credit with the agreement or
78 understanding that the proceeds of such transactions, in whole or substantial part, are to be used to make
79 loans or extensions of credit to, to purchase assets of, or to make investments in, any affiliate of the
80 insurer making such loans or such extensions of credit; (iii) the assets of the insurer that are pledged on
81 behalf of companies in the holding company system; and (iv) the aggregate guarantees for loans or
82 extensions of credit made to affiliates which result in an actual contingent exposure of the insurer's
83 assets to liability. To the extent not already provided in this paragraph, the sum shall include for all
84 affiliated companies other than domestic and foreign insurance company subsidiaries and health
85 maintenance organization subsidiaries (i) total net moneys or other considerations expended and
86 obligations assumed in the acquisition or formation of a subsidiary, including all organizational expenses
87 and contributions to capital and surplus of such subsidiary whether or not represented by the purchase of
88 capital stock or issuance of other securities and (ii) all amounts expended in acquiring additional
89 common stock, preferred stock, debt obligations, and other securities and all contributions to the capital
90 or surplus of a subsidiary subsequent to its acquisition or formation.

91 For the purposes of this section, a "transaction between a domestic insurer and any of its affiliates"
92 includes any transaction between a domestic insurer and a nonaffiliate if such transaction involves (i)
93 any loan or extension of credit where the insurer makes such loan or extension of credit with the
94 agreement or understanding that the proceeds of such transaction, in whole or substantial part, are to be
95 used to make any loan or extension of credit to, to purchase assets of, or to make investments in any
96 affiliate of the insurer or (ii) a reinsurance agreement or risk-sharing arrangement, or modifications
97 thereto, which requires as consideration the transfer of assets from an insurer to a nonaffiliate, if an
98 agreement or understanding exists between the insurer and the nonaffiliate that any portion of such
99 assets will be transferred to one or more affiliates of the insurer.

100 Failure of the Commission to act within sixty days after notification by the insurer shall constitute
101 approval of the transaction.

102 B. Nothing contained in this section shall authorize or permit any transaction that would be otherwise
103 contrary to law.

104 C. The Commission, in reviewing any material transaction under this section, shall consider whether
105 the material transaction complies with the standards set forth in § 38.2-1330 and whether it may
106 adversely affect the interest of policyholders. The Commission shall set forth the specific reasons for the
107 disapproval of any material transactions.

108 D. The approval of any material transaction under this section shall be deemed an amendment under
109 subsection E of § 38.2-1329 to an insurer's registration statement without further filing.

110 E. This section shall not apply to a material transaction that is a dividend or distribution.

111 § 38.2-1411.2. Investment limits in medium grade and lower grade obligations.

112 A. No domestic insurer shall acquire, directly or indirectly, any medium grade or lower grade
113 obligations of any business entity if, after giving effect to any such acquisition, the aggregate amount of
114 all medium grade and lower grade obligations then held by the domestic insurer would exceed twenty
115 percent of its admitted assets, provided that:

116 1. No more than ten percent of its admitted assets consists of lower grade obligations;

117 2. No more than three percent of its admitted assets consists of lower grade obligations rated five or

118 six by the Securities Valuation Office of the National Association of Insurance Commissioners; and
 119 3. No more than one percent of its admitted assets consists of lower grade obligations rated six by
 120 the Securities Valuation Office of the National Association of Insurance Commissioners.

121 Attaining or exceeding the limit of any one category shall not preclude an insurer from acquiring
 122 obligations in other categories subject to the specific and multi-category limits.

123 B. No domestic insurer may invest more than an aggregate of one percent of its admitted assets in
 124 medium grade obligations issued, guaranteed or insured by any one ~~institution~~ *business entity* nor may it
 125 invest more than one-half of one percent of its admitted assets in lower grade obligations issued,
 126 guaranteed or insured by any one business entity. In no event may a domestic insurer invest more than
 127 one percent of its admitted assets in any medium or lower grade obligations issued, guaranteed or
 128 insured by any one business entity.

129 C. Nothing contained in this section shall prohibit a domestic insurer from acquiring any obligation
 130 which it has committed to acquire if the insurer would have been permitted to acquire that obligation
 131 pursuant to the provisions of this chapter on the date on which such insurer committed to purchase that
 132 obligation.

133 D. Notwithstanding the foregoing, a domestic insurer may acquire any obligation of a business entity
 134 in which the insurer already has one or more obligations, if the obligation is acquired in order to protect
 135 an investment previously made in the obligations of the business entity; however, all such acquired
 136 obligations shall not exceed one-half of one percent of the insured's admitted assets.

137 E. Nothing contained in this section shall prohibit a domestic insurer from acquiring any obligation
 138 as a result of a restructuring of any obligation already held.

139 F. Nothing contained in this section shall require a domestic insurer to sell or otherwise dispose of
 140 any obligations legally acquired prior to July 1, 1992.

141 G. The Board of Directors of any domestic insurer which acquires or invests, directly or indirectly,
 142 more than two percent of its admitted assets in medium grade or lower grade obligations of any
 143 individual business entity, shall adopt a written plan for the making of such investments. The plan shall
 144 contain, in addition to guidelines with respect to the quality of the issues invested in, diversification
 145 standards including, but not limited to, standards for issuer, industry, duration, liquidity and geographic
 146 location.

147 H. If the Commission finds that economic or other conditions render any rating of any obligation by
 148 the Securities Valuation Office of the National Association of Insurance Commissioners obsolete or
 149 unreflective of a diminished creditworthiness of the business entity issuing such obligations, the
 150 Commission may assign the obligations to a lower grade based on the findings of a national rating
 151 agency recognized by the Commission.

152 § 38.2-4214. Application of certain provisions of law.

153 No provision of this title except this chapter and, insofar as they are not inconsistent with this
 154 chapter, §§ 38.2-200, 38.2-203, 38.2-210 through 38.2-213, 38.2-218 through 38.2-225, 38.2-230,
 155 38.2-232, 38.2-305, 38.2-316, 38.2-322, 38.2-400, 38.2-402 through 38.2-413, 38.2-500 through
 156 38.2-515, 38.2-600 through 38.2-620, 38.2-700 through 38.2-705, 38.2-900 through 38.2-904, 38.2-1017,
 157 38.2-1018, 38.2-1038, 38.2-1040 through 38.2-1044, Articles 1 (§ 38.2-1300 et seq.) and 2
 158 (§ 38.2-1306.2 et seq.) of Chapter 13, §§ 38.2-1312, 38.2-1314, 38.2-1317 through 38.2-1328, 38.2-1334,
 159 38.2-1340, 38.2-1400 through 38.2-1444, 38.2-1800 through 38.2-1836, 38.2-3400, 38.2-3401,
 160 38.2-3404, 38.2-3405, 38.2-3405.1, 38.2-3407.1 through 38.2-3407.6:1, 38.2-3407.9 through
 161 38.2-3407.16, 38.2-3409, 38.2-3411 through 38.2-3419.1, 38.2-3430.1 through 38.2-3437, 38.2-3501,
 162 38.2-3502, 38.2-3514.1, 38.2-3514.2, 38.2-3516 through 38.2-3520 as they apply to Medicare
 163 supplement policies, §§ 38.2-3522.1 through 38.2-3523.4, 38.2-3525, 38.2-3540.1, 38.2-3541, 38.2-3542,
 164 38.2-3543.2, 38.2-3600 through 38.2-3607, ~~Chapter 53 (§ 38.2-5300 et seq.)~~, Chapter 58 (§ 38.2-5800 et
 165 seq.) and Chapter 59 (§ 38.2-5900 et seq.) of this title shall apply to the operation of a plan.

166 § 38.2-4319. (Effective until July 1, 2004) Statutory construction and relationship to other laws.

167 A. No provisions of this title except this chapter and, insofar as they are not inconsistent with this
 168 chapter, §§ 38.2-100, 38.2-200, 38.2-203, 38.2-210 through 38.2-213, 38.2-218 through 38.2-225,
 169 38.2-229, 38.2-232, 38.2-305, 38.2-316, 38.2-322, 38.2-400, 38.2-402 through 38.2-413, 38.2-500
 170 through 38.2-515, 38.2-600 through 38.2-620, Chapter 9 (§ 38.2-900 et seq.), §§ 38.2-1057, 38.2-1306.2
 171 through 38.2-1309, Articles 4 (§ 38.2-1317 et seq.) and 5 (§ 38.2-1322 et seq.) of Chapter 13, Articles 1
 172 (§ 38.2-1400 et seq.) and 2 (§ 38.2-1412 et seq.) of Chapter 14, §§ 38.2-1800 through 38.2-1836,
 173 38.2-3401, 38.2-3405, 38.2-3405.1, 38.2-3407.2 through 38.2-3407.6:1, 38.2-3407.9 through
 174 38.2-3407.16, 38.2-3411.2, 38.2-3412.1:01, 38.2-3414.1, 38.2-3418.1 through 38.2-3418.11, 38.2-3419.1,
 175 38.2-3430.1 through 38.2-3437, 38.2-3500, 38.2-3514.1, 38.2-3514.2, §§ 38.2-3522.1 through
 176 38.2-3523.4, 38.2-3525, 38.2-3542, 38.2-3543.2, ~~Chapter 53 (§ 38.2-5300 et seq.)~~, Chapter 58
 177 (§ 38.2-5800 et seq.) and Chapter 59 (§ 38.2-5900 et seq.) of this title shall be applicable to any health
 178 maintenance organization granted a license under this chapter. This chapter shall not apply to an insurer

179 or health services plan licensed and regulated in conformance with the insurance laws or Chapter 42
180 (§ 38.2-4200 et seq.) of this title except with respect to the activities of its health maintenance
181 organization.

182 B. Solicitation of enrollees by a licensed health maintenance organization or by its representatives
183 shall not be construed to violate any provisions of law relating to solicitation or advertising by health
184 professionals.

185 C. A licensed health maintenance organization shall not be deemed to be engaged in the unlawful
186 practice of medicine. All health care providers associated with a health maintenance organization shall
187 be subject to all provisions of law.

188 D. Notwithstanding the definition of an eligible employee as set forth in § 38.2-3431, a health
189 maintenance organization providing health care plans pursuant to § 38.2-3431 shall not be required to
190 offer coverage to or accept applications from an employee who does not reside within the health
191 maintenance organization's service area.

192 § 38.2-4319. (Effective July 1, 2004) Statutory construction and relationship to other laws.

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194 chapter, §§ 38.2-100, 38.2-200, 38.2-203, 38.2-210 through 38.2-213, 38.2-218 through 38.2-225,
195 38.2-229, 38.2-232, 38.2-305, 38.2-316, 38.2-322, 38.2-400, 38.2-402 through 38.2-413, 38.2-500
196 through 38.2-515, 38.2-600 through 38.2-620, Chapter 9 (§ 38.2-900 et seq.), §§ 38.2-1057, 38.2-1306.2
197 through 38.2-1309, Articles 4 (§ 38.2-1317 et seq.) and 5 (§ 38.2-1322 et seq.) of Chapter 13, Articles 1
198 (§ 38.2-1400 et seq.) and 2 (§ 38.2-1412 et seq.) of Chapter 14, §§ 38.2-1800 through 38.2-1836,
199 38.2-3401, 38.2-3405, 38.2-3405.1, 38.2-3407.2 through 38.2-3407.6:1, 38.2-3407.9 through
200 38.2-3407.16, 38.2-3411.2, 38.2-3414.1, 38.2-3418.1 through 38.2-3418.11, 38.2-3419.1, 38.2-3430.1
201 through 38.2-3437, 38.2-3500, 38.2-3514.1, 38.2-3514.2, §§ 38.2-3522.1 through 38.2-3523.4, 38.2-3525,
202 38.2-3542, 38.2-3543.2, ~~Chapter 53 (§ 38.2-5300 et seq.)~~, Chapter 58 (§ 38.2-5800 et seq.) and Chapter
203 59 (§ 38.2-5900 et seq.) of this title shall be applicable to any health maintenance organization granted a
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216 maintenance organization's service area.