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HOUSE BILL NO. 2699

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Corporations, Insurance and Banking
on January 31, 1997)

(Patron Prior to Substitute—Delegate Armstrong)

A BILL to amend and reenact §§ 8.01-413.01 and 38.2-2201 of the Code of Virginia, relating to payment of medical expense and loss of income benefits and the admissibility of medical evidence.

Be it enacted by the General Assembly of Virginia:

1. That §§ 8.01-413.01 and 38.2-2201 of the Code of Virginia are amended and reenacted as follows:

§ 8.01-413.01. Authenticity and reasonableness of medical bills; presumption.

A. In any action for personal injuries, wrongful death, or for medical expense benefits payable under a motor vehicle insurance policy issued pursuant to § 38.2-124 or § 38.2-2201, the authenticity of bills for medical services provided and the reasonableness of the charges of the health care provider shall be rebuttably presumed upon identification by the plaintiff of the original bill or a duly authenticated copy and the plaintiff's testimony (i) identifying the health care provider, (ii) explaining the circumstances surrounding his receipt of the bill, (iii) describing the services rendered and (iv) stating that the services were rendered in connection with treatment for the injuries received in the event giving rise to the action. The presumption herein shall not apply unless the opposing party or his attorney has been furnished such medical records at least twenty-one days prior to the trial.

B. Where no medical bill is rendered or specific charge made by a health care provider to the insured, an insurer, or any other person, but a claim has been incurred pursuant to § 38.2-2201, the usual and customary fee charged for the service rendered may be established by the testimony or the affidavit of an expert having knowledge of the usual and customary fees charged for the services rendered. If the fee is to be established by affidavit, the affidavit shall be submitted to the opposing party or his attorney at least twenty-one days prior to trial. The testimony or the affidavit is subject to rebuttal and may be admitted in the same manner as an original bill or authenticated copy described in subsection A of this section.

§ 38.2-2201. Provisions for payment of medical expense and loss of income benefits.

A. Upon request of an insured, each insurer licensed in this Commonwealth issuing or delivering any policy or contract of bodily injury or property damage liability insurance covering liability arising from the ownership, maintenance or use of any motor vehicle shall provide on payment of the premium, as a minimum coverage (i) to persons occupying the insured motor vehicle; and (ii) to the named insured and, while resident of the named insured's household, the spouse and relatives of the named insured while in or upon, entering or alighting from or through being struck by a motor vehicle while not occupying a motor vehicle, the following health care and disability benefits for each accident:

1. All reasonable and necessary expenses for medical, chiropractic, hospital, dental, surgical, ambulance, prosthetic and rehabilitation services, and funeral expenses, resulting from the accident and incurred within three years after the date of the accident, up to \$2,000 per person; however, if the insured does not elect to purchase such limit the insurer and insured may agree to any other limit; and

2. If the person is usually engaged in a remunerative occupation, an amount equal to the loss of income incurred after the date of the accident resulting from injuries received in the accident up to \$100 per week during the period from the first workday lost as a result of the accident up to the date the person is able to return to his usual occupation. However, the period shall not extend beyond one year from the date of the accident.

3. An expense described in subdivision 1 shall be deemed to have been incurred:

(i) if the insured is directly responsible for payment of the expense;

(ii) if the expense is paid by and a lien established pursuant to Medicaid, Medicare, or the Medical Recovery Act, in the amount of the lien;

(iii) if the expense is paid by a personal health care insurer, pursuant to a negotiated contract with the health care provider, wherein the actual payment with reference to the medical bill rendered by the provider is less than or equal to the provider's usual and customary fee, in the amount of the actual payment; however, if the insured is required to make a co-payment or similarly calculated payment in addition to the actual payment by the personal health care insurer, the amount shall be increased by the co-payment or similarly calculated payment made by the insured;

(iv) if the expense is paid pursuant to a preferred provider policy or contract, in the amount of the fee paid by and on behalf of the insured; however, if the insured is required to make a co-payment or similarly calculated payment in addition to the actual payment by the personal health care insurer, the amount shall be increased by the co-payment or similarly calculated payment made by the insured; or

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60 (v) if no medical bill is rendered or specific charge made by a health care provider to the insured,
61 an insurer, or any other person, in the amount of the usual and customary fee charged for the service
62 rendered.

63 B. The insured has the option of purchasing either or both of the coverages set forth in subdivisions
64 1 and 2 of subsection A of this section. Either or both of the coverages, as well as any other medical
65 expense or loss of income coverage under any policy of automobile liability insurance, shall be payable
66 to the covered injured person notwithstanding the failure or refusal of the named insured or other person
67 entitled to the coverage to give notice to the insurer of an accident as soon as practicable under the
68 terms of the policy, except where the failure or refusal prejudices the insurer in establishing the validity
69 of the claim.

70 C. In any policy of personal automobile insurance in which the insured has purchased coverage
71 under subsection A of this section, every insurer providing such coverage arising from the ownership,
72 maintenance or use of no more than four motor vehicles shall be liable to pay up to the maximum
73 policy limit available on every motor vehicle insured under that coverage if the health care or disability
74 expenses and costs mentioned in subsection A of this section exceed the limits of coverage for any one
75 motor vehicle so insured.