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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2009

A N A C T

RELATING TO INSURANCE - UNFAIR CLAIMS SETTLEMENT PRACTICES ACT

Introduced By: Representatives Schadone, and Petrarca

Date Introduced: January 28, 2009

Referred To: House Corporations

It is enacted by the General Assembly as follows:

1 SECTION 1. Chapter 27-9.1 of the General Laws entitled "Unfair Claims Settlement
2 Practices Act" is hereby repealed in its entirety.

3 ~~CHAPTER 27-9.1~~

4 ~~Unfair Claims Settlement Practices Act~~

5 ~~**27-9.1-1. Purpose.** --- The purpose of this chapter is to set forth standards for the
6 investigation and disposition of claims arising under policies or certificates of insurance issued to
7 residents of Rhode Island. It is not intended to cover claims involving workers' compensation,
8 fidelity, suretyship or boiler and machinery insurance. Nothing contained in this chapter shall be
9 construed to create or imply a private cause of action for violation of this chapter.~~

10 ~~**27-9.1-2. Definitions.** --- When used in this chapter:~~

11 ~~-(1) "Director" means the director of business regulation;~~

12 ~~-(2) "Insured" means the party named on a policy or certificate as the individual with
13 legal rights to the benefits provided by the policy;~~

14 ~~-(3) "Insurer" means any person, reciprocal exchange, inter insurer, Lloyds insurer,
15 fraternal benefit society, and any other legal entity engaged in the business of insurance,
16 including insurance producers, adjusters and third party administrators. Insurer shall also mean a
17 nonprofit hospital and/or medical service corporation, a nonprofit dental service corporation, a
18 nonprofit optometric service corporation, a nonprofit legal service corporation, a health
19 maintenance organization as defined in chapter 41 of this title or as defined in chapter 62 of title~~

1 ~~42, or any other entity providing a plan of health benefits subject to state insurance regulation.~~
2 ~~Notwithstanding sections 27-19-2, 27-20-2, 27-20.1-2, 27-20.2-2, 27-20.3-2, and 27-41-22, for~~
3 ~~purposes of this chapter, these entities shall be deemed to be engaged in the business of~~
4 ~~insurance;~~

5 ~~(4) "Person" means any natural or artificial entity, including, but not limited to,~~
6 ~~individuals, partnerships, associations, trusts, or corporations; and~~

7 ~~(5) "Policy" or "certificate" means any contract of insurance, indemnity, medical, health~~
8 ~~or hospital service, or annuity issued. "Policy" or "certificate" for the purposes of this chapter~~
9 ~~shall not mean contracts or workers' compensation, fidelity, suretyship or boiler and machinery~~
10 ~~insurance.~~

11 ~~**27-9.1-3. Unfair claims settlement practices prohibited.** --- It is an improper claims~~
12 ~~practice for any domestic, foreign, or alien insurer transacting business in this state to commit any~~
13 ~~act defined in section 27-9.1-4 of this chapter if:~~

14 ~~(1) It is committed flagrantly and in conscious disregard of this chapter or any rules~~
15 ~~promulgated pursuant to this chapter; or~~

16 ~~(2) It has been committed with a frequency as to indicate a general business practice to~~
17 ~~engage in that type of conduct.~~

18 ~~**27-9.1-4. "Unfair claims practices" defined.** --- (a) Any of the following acts by an~~
19 ~~insurer, if committed in violation of section 27-9.1-3, constitutes an unfair claims practice:~~

20 ~~(1) Misrepresenting to claimants and insured relevant facts or policy provisions relating~~
21 ~~to coverage at issue;~~

22 ~~(2) Failing to acknowledge and act with reasonable promptness upon pertinent~~
23 ~~communications with respect to claims arising under its policies;~~

24 ~~(3) Failing to adopt and implement reasonable standards for the prompt investigation and~~
25 ~~settlement of claims arising under its policies;~~

26 ~~(4) Not attempting in good faith to effectuate prompt, fair, and equitable settlement of~~
27 ~~claims submitted in which liability has become reasonably clear;~~

28 ~~(5) Compelling insured, beneficiaries, or claimants to institute suits to recover amounts~~
29 ~~due under its policies by offering substantially less than the amounts ultimately recovered in suits~~
30 ~~brought by them;~~

31 ~~(6) Refusing to pay claims without conducting a reasonable investigation;~~

32 ~~(7) Failing to affirm or deny coverage of claims within a reasonable time after having~~
33 ~~completed its investigation related to the claim or claims;~~

34 ~~(8) Attempting to settle or settling claims for less than the amount that a reasonable~~

1 ~~person would believe the insured or beneficiary was entitled by reference to written or printed~~
2 ~~advertising material accompanying or made part of an application;~~

3 ~~-(9) Attempting to settle or settling claims on the basis of an application that was~~
4 ~~materially altered without notice to, or knowledge or consent of, the insured;~~

5 ~~-(10) Making claims payments to an insured or beneficiary without indicating the~~
6 ~~coverage under which each payment is being made;~~

7 ~~-(11) Unreasonably delaying the investigation or payment of claims by requiring both a~~
8 ~~formal proof of loss form and subsequent verification that would result in duplication of~~
9 ~~information and verification appearing in the formal proof of loss form;~~

10 ~~-(12) Failing in the case of claims denials or offers of compromise settlement to promptly~~
11 ~~provide a reasonable and accurate explanation of the basis of those actions;~~

12 ~~-(13) Failing to provide forms necessary to present claims within ten (10) calendar days~~
13 ~~of a request with reasonable explanations regarding their use;~~

14 ~~-(14) Failing to adopt and implement reasonable standards to assure that the repairs of a~~
15 ~~repairer owned by or required to be used by the insurer are performed in a workmanlike manner;~~

16 ~~-(15) Misleading a claimant as to the applicable statute of limitations;~~

17 ~~-(16) Failing to respond to a claim within thirty (30) days, unless the insured shall agree~~
18 ~~to a longer period;~~

19 ~~-(17) Engaging in any act or practice of intimidation, coercion, threat or~~
20 ~~misrepresentation of consumers rights, for or against any insured person, claimant, or entity to~~
21 ~~use a particular rental car company for motor vehicle replacement services or products; provided,~~
22 ~~however, nothing shall prohibit any insurance company, agent or adjuster from providing to such~~
23 ~~insured person, claimant or entity the names of a rental car company with which arrangements~~
24 ~~have been made with respect to motor vehicle replacement services; provided, that the rental car~~
25 ~~company is licensed pursuant to Rhode Island general laws section 31-5-33; or~~

26 ~~-(18) Refusing to honor a "direction to pay" executed by an insured, claimant, indicating~~
27 ~~that the insured or claimant, wishes to have the insurance company directly pay his or her motor~~
28 ~~vehicle replacement vehicle rental benefit to the rental car company of the consumer's choice;~~
29 ~~provided, that the rental car company is licensed pursuant to Rhode Island general laws section~~
30 ~~31-5-33. Nothing in this section shall be construed to prevent the insurance company's ability to~~
31 ~~question or challenge the amount charged, in accordance with its policy provisions, and the~~
32 ~~requirements of the department of business regulation;~~

33 ~~-(19) Modifying any published manual (i.e. motors, mitchells, or any automated appraisal~~
34 ~~system) relating to auto body repair without prior agreement between the parties;~~

1 ~~-(20) Failing to use a manual or system in its entirety in the appraisal of a motor vehicle;~~

2 ~~-(21) Refusing to compensate an auto body shop for documented charges as identified~~
3 ~~through industry recognized software programs or systems for paint and refinishing materials in~~
4 ~~auto body repair claims; and/or~~

5 ~~-(22) [Effective January 1, 2008.]Failing to comply with the requirements of Rhode~~
6 ~~Island General Laws section 31-47-12.1.~~

7 ~~-(b) (1) Nothing contained in subsections 27-9.1-4(a)(19), (20), & (21) of this chapter~~
8 ~~shall be construed to interfere with an auto body repair facility's contract with an insurance~~
9 ~~company.~~

10 ~~-(2) If an insurance company and auto body repair facility have contracted under a direct~~
11 ~~repair program or any similar program thereto the provisions of subsections 27-9.1-4(a)(19), (20)~~
12 ~~& (21) shall not apply.~~

13 ~~-(3) If the insured or claimant elects to have the vehicle repaired at a shop of his or her~~
14 ~~choice, the insurer shall not limit or discount the reasonable repair costs based upon the charges~~
15 ~~that would have been incurred had the vehicle been repaired by the insurer's chosen shop(s).~~

16 **27-9.1-4.1. Amounts received in settlement of claims retained for unpaid premiums.**

17 ~~--(a) Any insurance company or insurance producer may retain an amount equal to any unpaid~~
18 ~~premiums due on the policy under which a claim is being presented when settling any presented~~
19 ~~claim for an insured; provided, that:~~

20 ~~-(1) The unpaid premium remains unpaid sixty (60) days after the effective date of the~~
21 ~~policy or the date of the original billing of the premium, whichever occurs later;~~

22 ~~-(2) The insurance company shall pay to the insurance producer, upon written~~
23 ~~documentation submitted by the insurance agent or broker of the unpaid premium due, the~~
24 ~~amount equal to the unpaid premium due the insurance producer from the amount of the claim~~
25 ~~being presented and the balance of the claim be paid to the insured and/or loss payee or~~
26 ~~mortgagee named in the policy.~~

27 ~~-(b) This section shall not apply to any health insurance policy within the state.~~

28 **27-9.1-5. Response and statement of charges.** ~~--~~ The director shall provide an initial

29 ~~response within two (2) weeks to any written consumer complaint containing specific and~~
30 ~~credible allegation of an unfair claims settlement practice punishable pursuant to this chapter.~~

31 ~~Whenever the director has reasonable cause to believe that any insurer doing business in this state~~
32 ~~is engaging in any unfair claims practice and that a proceeding in respect to the practice would be~~
33 ~~in the public interest, the director shall issue and serve upon the insurer a statement of the charges~~
34 ~~in that respect and a notice of hearing, which notice shall set a hearing date not less than thirty~~

1 ~~(30) days from the date of the notice.~~

2 ~~**27-9.1-6. Cease and desist and penalty orders.** -- If, after a hearing, the director finds~~
3 ~~an insurer has engaged in an unfair claims practice, the director shall reduce the findings to~~
4 ~~writing and shall issue and cause to be served upon the insurer charged with the violation a copy~~
5 ~~of the findings and an order requiring the insurer to cease and desist from engaging in the act or~~
6 ~~practice and the director may, at the director's discretion, order:~~

7 ~~(1) Payment of a monetary penalty of not more than ten thousand dollars (\$10,000) for~~
8 ~~each violation, but not to exceed an aggregate penalty of one hundred thousand dollars~~
9 ~~(\$100,000), unless the violation was committed flagrantly and in conscious disregard of this~~
10 ~~chapter, in which case the penalty shall not be more than twenty five thousand dollars (\$25,000)~~
11 ~~for each violation, but not to exceed an aggregate penalty of two hundred fifty thousand dollars~~
12 ~~(\$250,000) pursuant to any hearing; and/or~~

13 ~~(2) Suspension or revocation of the insurer's license if the insurer knew or reasonably~~
14 ~~should have known it was in violation of this chapter.~~

15 ~~**27-9.1-7. Penalty for violation of cease and desist orders.** -- Any insurer which violates~~
16 ~~a cease and desist order of the director and, while the order is in effect, may, after notice and~~
17 ~~hearing and upon order of the director, be subject, at the discretion of the director, to:~~

18 ~~(1) A monetary penalty of not more than twenty five thousand dollars (\$25,000) for each~~
19 ~~and every act or violation not to exceed an aggregate of two hundred fifty thousand dollars~~
20 ~~(\$250,000) pursuant to any hearing; and/or~~

21 ~~(2) Suspension or revocation of the insurer's license.~~

22 ~~**27-9.1-8. Regulations.** -- The director may, after notice and a hearing, promulgate~~
23 ~~reasonable rules, regulations, and orders as are necessary or proper to carry out and effectuate the~~
24 ~~provisions of this chapter. The regulations shall be subject to review in accordance with section~~
25 ~~42-35-7.~~

26 ~~**27-9.1-9. Severability.** -- If any provision of this chapter or the application of the~~
27 ~~provision to any person or circumstances shall be held invalid, the remainder of the chapter and~~
28 ~~the application of the provision to any person or circumstances other than those as to which it is~~
29 ~~held invalid shall not be affected by that invalidity.~~

30 SECTION 2. Title 27 of the General Laws entitled "INSURANCE" is hereby amended
31 by adding thereto the following chapter:

32 CHAPTER 9.1.1

33 FAIR INSURANCE CLAIMS PRACTICE ACT

34 ~~**27-9.1.1-1. Definitions.** -- For the purposes of this chapter the following definitions shall~~

1 apply:

2 (1) "Third-party claimant" or "claimant" means each person seeking recovery of benefits
3 against an insured under a liability insurance policy, whether for personal injury or wrongful
4 death, or other economic loss, or both including, without limitation, damages resulting from loss
5 of consortium or loss of care, comfort, society and the like resulting from wrongful death;

6 (2) "Insured" means a person or entity named as an insured in a liability insurance policy;
7 a person or entity who is identified as an additional insured under a liability insurance policy; a
8 person or entity who is an additional insured under the definitions of insured persons set forth in a
9 liability insurance policy; a person or entity who is defined, by law, as an insured under a liability
10 insurance policy;

11 (3) "Insurer" shall include any liability insurer licensed pursuant to, or subject to
12 regulation under, the insurance code who provides liability coverage to an insured against whom
13 the third-party claimant makes a claim for personal injury, wrongful death, or other economic
14 loss. "Insurer" does not include however, the self-funded liability protection program, fund, or
15 plan, itself an insurer named as the insurer under a policy of workers' compensation insurance,
16 nor a self-insured public entity, a private administrator for a public entity, or a public entity
17 insured by a private insurer or carrier;

18 (4) "Director" means the director of business regulation; and

19 (5) "Person" means any natural or artificial entity, including, but not limited to,
20 individuals, partnerships, associations, trusts, or corporations.

21 **27-9.1.1-2. Duty to act in good faith.** – (a) Every insurer, as defined in subdivision (3)
22 of this section, doing business in the state of Rhode Island shall act in good faith toward and deal
23 fairly with third-party claimants. A third-party claimant may bring an action against an insurer
24 doing business in the state to recover damages, including general, special, and exemplary
25 damages, for commission of any unfair claims settlement practice.

26 (b) A third-party claimant shall not be entitled to assert the remedies set forth in
27 subsection (a) unless the third-party claimant:

28 (1) Obtains in the underlying action a final judgment after trial, a judgment after default,
29 or an arbitration award arising from a contractual predispute binding arbitration clause or
30 agreement; and

31 (2) The third-party claimant makes a written demand to settle the claim in the underlying
32 action, and the judgment or arbitration award for the claimant in that prior proceeding exceeded
33 the amount of the final written demand on all claims by the third-party claimant made before the
34 trial, entry of default or arbitration listed above. A final written demand may not exceed the

1 applicable policy limits and shall be deemed rejected if not responded to within thirty (30) days of
2 receipt of the final written demand. The amount of the jury verdict or arbitration award may be
3 considered as evidence of bad faith, but shall not be the sole consideration.

4 **27-9.1.1-3. “Bad faith claims practices” defined.** – Any of the following acts by an
5 insurer constitutes an unfair claims practice if:

6 (1) It is committed flagrantly and in conscious disregard of this chapter or any rules
7 promulgated hereunder; or

8 (2) It has been committed with such frequency as to indicate a general business practice
9 to engage in that type of conduct:

10 (i) Misrepresenting to claimants and insureds relevant facts or policy provisions relating
11 to coverages at issue;

12 (ii) Failing to acknowledge and act with reasonable promptness upon pertinent
13 communications with respect to claims arising under its policies;

14 (iii) Failing to adopt and implement reasonable standards for the prompt investigation and
15 settlement of claims arising under its policies;

16 (iv) Not attempting in good faith to effectuate prompt, fair, and equitable settlement of
17 claims submitted in which liability has become reasonably clear;

18 (v) Compelling insureds, beneficiaries, or claimants to institute suits to recover amounts
19 due under its policies by offering substantially less than the amounts ultimately recovered in suits
20 brought by them;

21 (vi) Refusing to pay claims without conducting a reasonable investigation;

22 (vii) Failing to affirm or deny coverage of claims within a reasonable time after having
23 completed its investigation related to the claim or claims;

24 (viii) Attempting to settle or settling claims for less than the amount that a reasonable
25 person would believe the insured or beneficiary was entitled by reference to written or printed
26 advertising material accompanying or made part of an application;

27 (ix) Attempting to settle or settling claims on the basis of an application that was
28 materially altered without notice to, or knowledge or consent of, the insured;

29 (x) Making claims payments to an insured or beneficiary without indicating the coverage
30 under which each payment is being made;

31 (xi) Unreasonably delaying the investigation or payment of claims by requiring both a
32 formal proof of loss form and subsequent verification that would result in duplication of
33 information and verification appearing in the formal proof of loss form;

34 (xii) Failing in the case of claims denials or offers of compromise settlements to promptly

1 provide a reasonable and accurate explanation of the basis of those actions;

2 (xiii) Failing to provide forms necessary to present claims within ten (10) calendar days
3 of a request with reasonable explanations regarding their use;

4 (xiv) Failing to adopt and implement reasonable standards to assure that the repairs of a
5 repairer owned by or required to be used by the insurer are performed in a workmanlike manner;

6 (xv) Misleading a claimant as to the applicable statute of limitations; or

7 (xvi) Failing to respond to a claim within thirty (30) days, unless the insured shall agree
8 to a longer period.

9 **27-9.1.1-4. Remedies.** – The remedies set forth in this chapter shall apply to any insurer
10 who violates the standards set forth in subdivision (1) in its handling, processing, or settlement of
11 the claims made by a third-party claimant under the insured’s insurance protection; provided
12 however, that:

13 (1) A professional liability insurer is not liable under this title if all the following
14 conditions apply:

15 (i) The consent of the policyholder to settlement is a prerequisite to settlement under the
16 terms of the insurance policy or by statute;

17 (ii) The insurance company has assessed the case against the policyholder as to potential
18 liability and damages known at that time and has fully informed the policyholder of that
19 assessment;

20 (iii) The policyholder’s refusal to consent is not based on intentionally erroneous or
21 misleading information provided by the insurer.

22 (2) A person injured in an accident arising out of the operation or use of a motor vehicle,
23 who, at the time of the accident was operating a motor vehicle in violation of section 31-27-1.1 or
24 section 31-27-2, and was convicted of such offense, may not assert a cause of action under this
25 section.

26 **27-9.1.1-5. Time limitation in which to bring action.** – Any time period within which
27 an action must be commenced pursuant to any applicable statute of limitations shall not begin
28 until the underlying claim has been resolved through a final judgment or final arbitration award.
29 In the event of an appeal by either party, resolution of the appeal shall be a prerequisite to a claim
30 under this title.

31 **27-9.1.1-6. No preclusion to other theories of liability.** – Nothing in this title shall
32 abrogate or limit any theory of liability or remedy otherwise available at law including, but not
33 limited to, tort remedies for the breach of implied covenant and fair dealing or any other theory of
34 liability or remedy. In addition, nothing in this section shall relieve an insurer of its obligation of

1 good faith and fair dealing to its own insured. The insurer however, cannot wrongfully use its
2 obligation to its own insured to violate its duties under this chapter.

3 **27-9.1.1-7. Response and statement of charges.** -- Nothing in this chapter shall
4 abrogate the director of business regulation's authority to regulate such unfair claims practices.
5 Whenever the director has reasonable cause to believe that any insurer doing business in this state
6 is engaging in any unfair claims practice and that a proceeding in respect thereto would be in the
7 public interest, the director shall issue and serve upon the insurer a statement of the charges in
8 that respect and a notice of hearing thereon, which notice shall set a hearing date not less than
9 thirty (30) days from the date of the notice. The director of business regulation shall provide an
10 initial response within two (2) weeks to any written consumer complaint containing specific and
11 credible allegations of an unfair claims practice punishable hereunder.

12 **27-9.1.1-8. Cease and desist and penalty orders.** -- If, after a hearing, the director finds
13 an insurer has engaged in an unfair claims practice, the director shall reduce the findings to
14 writing and shall issue and cause to be served upon the insurer charged with the violation a copy
15 of the findings and an order requiring the insurer to cease and desist from engaging in the act or
16 practice and the director may, at the director's discretion, order:

17 (1) Payment of monetary penalty of not more than ten thousand dollars (\$10,000) for
18 each violation, but not to exceed an aggregate penalty of one hundred thousand dollars
19 (\$100,000), unless the violation was committed flagrantly and in conscious disregard of this
20 chapter, in which case the penalty shall not be more than twenty-five thousand dollars (\$25,000)
21 for each violation, but not to exceed an aggregate penalty of two hundred fifty thousand dollars
22 (\$250,000) pursuant to any hearing; and/or

23 (2) Suspension or revocation of the insurer's license if the insurer knew or reasonably
24 should have known it was in violation of this chapter.

25 **27-9.1.1-9. Accidents covered.** -- The provisions of this title shall apply, prospectively, to
26 events or accidents covered by the applicable insurance policy that occur on or after January 1,
27 2008.

28 SECTION 3. Chapter 27-10.3 of the General Laws entitled "Motor Vehicle Insurance -
29 Mandatory Arbitration Provision" is hereby repealed in its entirety.

30 ~~CHAPTER 10.3~~

31 ~~Motor Vehicle Insurance—Mandatory Arbitration Provision~~

32 ~~**27-10.3-1. Arbitration provision** -- (a) Every contract of motor vehicle liability~~
33 ~~insurance, issued in the state by an insurance carrier authorized to do business in the state, shall~~
34 ~~contain the following provisions:~~

1 ~~-(1) Any person, hereinafter referred to as the plaintiff, suffering a loss, allegedly~~
2 ~~resulting out of the ownership, maintenance, or use of a motor vehicle by an insured, and~~
3 ~~allegedly resulting from liability imposed by law for property damage, bodily injury, or death,~~
4 ~~may, at his or her election, whenever the claim is for twenty five thousand dollars (\$25,000) or~~
5 ~~less, submit the matter to arbitration pursuant to chapter 3 of title 10;~~

6 ~~-(2) Selection of arbitrator..—After submission to arbitration by the plaintiff, one~~
7 ~~arbitrator shall be selected from the list of qualified arbitrators of the court annexed arbitration~~
8 ~~program of the superior court in the same manner as arbitrators are selected in accordance with~~
9 ~~the rules of that program. Each party shall share the expenses of arbitration in accordance with~~
10 ~~the rules of the court annexed arbitration program;~~

11 ~~-(3) Hearings..—The arbitrator shall call a hearing and provide seven (7) days notice of~~
12 ~~the time and place of the hearing to the parties. The hearing shall be informal, and the rules of~~
13 ~~evidence prevailing in judicial proceedings shall be binding. Any and all documentary evidence~~
14 ~~and other data deemed relevant by the arbitrators may be received in evidence. The arbitrators~~
15 ~~shall have the power to administer oaths and to require by subpoena the attendance and testimony~~
16 ~~of witnesses, and the production of books, records, and other evidence, relative or pertinent to the~~
17 ~~issues presented to them for determination. The decision of the arbitrators shall be binding upon~~
18 ~~the parties unless:~~

19 ~~-(i) In the event that suit has not been instituted, either party reserves his or her right to a~~
20 ~~jury trial by giving notice of this reservation of right to the other party or parties and to the~~
21 ~~arbitrators within sixty (60) days of the arbitrators award by certified mail return receipt~~
22 ~~requested; or~~

23 ~~-(ii) In the event that suit has been instituted, either party files a request for a jury trial~~
24 ~~with the court and with notice to the other party or parties within sixty (60) days of the arbitrator's~~
25 ~~award. If the case proceeds to trial subsequent to arbitration, the decision of the arbitrators shall~~
26 ~~not be admissible;~~

27 ~~-(4) Statute of limitations..—Notwithstanding the foregoing, a suit shall be instituted in~~
28 ~~order to bring the action within any applicable statute of limitations, but the suit will otherwise be~~
29 ~~stayed until an arbitrators award has been made or the case reached for trial.~~

30 ~~-(b) Every person who maintains motor vehicle liability insurance shall, when making an~~
31 ~~application for a motor vehicle operator's license, or the renewal of that license, or when~~
32 ~~registering a motor vehicle, agree in writing on a form provided by the director of the department~~
33 ~~of transportation to be bound by the provisions of this chapter.~~

34 SECTION 4. Title 27 of the General Laws entitled "INSURANCE" is hereby amended

1 by adding thereto the following chapter:

2 CHAPTER 27-10.3.1

3 ALTERNATIVE DISPUTE RESOLUTION ACT

4 **27-10.3.1-1. Definitions.** -- For purposes of this chapter:

5 (1) "Claimant" means a person defined in section 27-9.1.1-1; and

6 (2) "Insurer" means any insurer defined in section 27-9.1.1-1.

7 **27-10.3.1-2. Arbitration provisions.** -- (a) Every contract of motor vehicle liability

8 insurance, issued in the state by an insurance carrier authorized to do business in the state, shall
9 contain the following provision: Any person, hereinafter referred to as a claimant, suffering a
10 loss, allegedly resulting out of the ownership, maintenance, or use of a motor vehicle by an
11 insured, and allegedly resulting from liability imposed by law for property damage, bodily injury,
12 or death, at his or her election, whenever the claim is for fifty thousand dollars (\$50,000) or less,
13 or within policy limits where policy limits do not exceed fifty thousand dollars (\$50,000),
14 exclusive of applicable uninsured and underinsured motorist coverage, may submit the matter to
15 arbitration pursuant to this chapter.

16 (b) Within thirty (30) days after receipt of a request for arbitration, the insurer shall
17 respond to the request in writing.

18 (c) A claimant requesting arbitration under this section shall at the same time send a copy
19 of each demand to arbitrate to all insurers involved in the claim. Demands made by counsel
20 under this section shall be deemed to be made with the authority of all clients represented by that
21 counsel.

22 **27-10.3.1-3. Presumption of good faith.** -- (a) A claim submitted to arbitration under
23 section 27-10.3.1-2 conclusively presumes the insurer to have complied with the duties under
24 section 27-9.1.1-2; provided, however, that the insurer agrees at the claimant's request that the
25 arbitrator's award shall be binding on all parties and shall resolve all disputes between the parties.

26 (b) Nothing in this section shall relieve an insurer of its obligation of good faith and fair
27 dealing to its own insured.

28 (c) In the event the insurer refuses to agree to a claimant's request for binding arbitration,
29 then the parties shall continue with nonbinding arbitration, at the claimant's request, in
30 accordance with section 27-10.3.1-2:

31 (1) In the event that suit has not been instituted, either party reserves his or her right to a
32 jury trial by giving notice of this reservation of right to the other party or parties and to the
33 arbitrators within thirty (30) days of the arbitrator's award by certified mail return receipt
34 requested; or

1 (2) In the event that suit has been instituted, either party files a request for a jury trial
2 with the court and with notice to the other party or parties within thirty (30) days of the
3 arbitrator's award. If the case proceeds to trial subsequent to arbitration, the decision of the
4 arbitrators shall not be admissible.

5 **27-10.3.1-4. Removal.** – (a) Upon a showing of good cause in a petition before the court
6 having jurisdiction over the amount in controversy, either side may request removal from
7 arbitration under this title and to commence or continue a civil action, upon a showing of any of
8 the following:

9 (1) Either party discovers new information regarding insurance coverage that creates
10 aggregate coverage for the claim in excess of fifty thousand dollars (\$50,000);

11 (2) A change in the nature or extent of the claimant's injuries or damages, which, despite
12 reasonable inquiry, was not discovered prior to the acceptance of the offer to engage in alternative
13 dispute resolution, and causes the claimant or attorney to believe that the reasonable value of the
14 claim will exceed fifty thousand dollars (\$50,000);

15 (3) A party discovers new, additional, potentially responsible persons or entities who are
16 not parties to the arbitration;

17 (4) A change of law affects the remedies available to a claimant, or a change in law
18 expands or contracts the claimant's legal right to recover;

19 (5) The interests of justice support permitting a party to commence a civil action; or

20 (6) A party unreasonably interferes with the completion of the arbitration.

21 (b) Within thirty (30) days of discovery of one of the conditions outlined in subsection
22 (a), and before commencement of the arbitration, the party seeking to remove the claim from
23 arbitration under this title shall petition the court having jurisdiction over the amount in
24 controversy, establishing good cause for the request.

25 (c) If a court finds good cause pursuant to a petition filed by a claimant to remove the
26 claim from arbitration under subsection (a), the presumption of good faith under section 27-
27 10.3.1-1 shall not apply if the good cause arises from a misrepresentation, error or unreasonable
28 interference in the conduct of the arbitration by the insurer.

29 (d) If the insurer removes the claim from arbitration pursuant to this title, the presumption
30 of good faith does not apply.

31 **27-10.3.1-5. Tolling of limitations period.** – (a) If a request for binding arbitration is
32 accepted by the insurer, any applicable period of limitations shall be tolled until settlement,
33 satisfaction of judgment, or thirty (30) days after a court order to remove a claim from arbitration
34 under this section.

1 (b) Any applicable case management rules are suspended upon agreement of the parties
2 to arbitrate a claim under this title. Additionally, an agreement to participate in arbitration under
3 this title relieves the parties of any obligation to participate in court-ordered arbitration or
4 mediation.

5 **27-10.3.1-6. Arbitration procedures.** -- Except as otherwise provided by this title,
6 arbitration shall be conducted under the same procedures as the superior court annexed arbitration
7 program; provided, however, that the following additional and supplemental provisions govern
8 arbitration under this title:

9 (1) Selection of arbitrator: After demand for arbitration is made the parties shall select a
10 single neutral arbitrator. If the parties can not agree, the arbitrator shall be selected from the list
11 of qualified arbitrators of the court annexed arbitration program of the superior court in the same
12 manner as arbitrators are selected in accordance with the rules of that program. Each party shall
13 equally share the expenses of arbitration in accordance with the rules of the court annexed
14 arbitration program;

15 (2) Hearings: The hearing shall be informal, and the rules of evidence prevailing in
16 judicial proceedings shall be binding. Any and all documentary evidence and other data deemed
17 relevant by the arbitrators may be received in evidence. The arbitrators shall have the power to
18 administer oaths and to require by subpoena the attendance and testimony of witnesses, and the
19 production of books, records, and other evidence, relative or pertinent to the issues presented to
20 them for determination;

21 (3) The arbitrator shall set a date convenient to the parties;

22 (4) Disputes arising regarding discovery shall be resolved by motion before the arbitrator.
23 The arbitration shall be deemed to be a proceeding and the hearing before the arbitrator shall be
24 deemed to be the trial of an issue for those purposes;

25 (5) No party may introduce new or different information from that provided under their
26 pre-arbitration statement at the arbitration unless it is provided to the other side at least ten (10)
27 days before the arbitration except when such evidence is offered solely for impeachment. Upon a
28 showing of good cause of the standards for judicial administration, the arbitrator may grant a
29 continuance to permit the introduction of the new information;

30 (6) Each party shall exchange a pre-arbitration statement including a list of all witnesses
31 and all exhibits no later than ten (10) days before the arbitration. Witnesses and exhibits not
32 listed shall not be considered or relied upon by the arbitrator unless offered solely for
33 impeachment or otherwise agreed by the parties;

34 (7) If more than one person or insurer may be liable for the injury, and if the actions

1 against each are subject to this title, the arbitration proceedings with respect to each may be
2 consolidated by agreement of the parties;

3 (8) The rules of evidence and rules for conduct of hearing set forth in the Rhode Island
4 court rules regarding arbitration hearings;

5 (9) The arbitrator may continue the arbitration or either party may continue the arbitration
6 by agreement or with a showing of good cause, approved by the arbitrator.

7 **27-10.3.1-7. Arbitrators award.** – The insurer shall satisfy the arbitration award within
8 thirty (30) days of conclusion of any post-resolution motions or settlement. Interest shall apply in
9 accordance with section 6-26-1.

10 SECTION 5. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO INSURANCE - UNFAIR CLAIMS SETTLEMENT PRACTICES ACT

1 This act would provide a cause of action for third-party claimants in automobile accidents
2 for unfair claims practices. In addition, this act would provide guidelines for arbitration of motor
3 vehicle accident claimants.

4 This act would take effect upon passage.

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LC00458
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