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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2012

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A N A C T

RELATING TO INSURANCE - MOTOR VEHICLE PROPERTY DAMAGE CLAIMS
SETTLEMENT ACT

Introduced By: Senators Goodwin, and Ruggerio

Date Introduced: March 01, 2012

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 27 of the General Laws entitled "INSURANCE" is hereby amended
2 by adding thereto the following chapter:

3 CHAPTER 10.4

4 MOTOR VEHICLE PROPERTY DAMAGE CLAIMS SETTLEMENT ACT

5 **27-10.4-1. Purpose of chapter. --** The general assembly declares that it is concerned
6 with ensuring fair claims settlement practices with regard to motor vehicle property damage
7 claims. The purpose of this chapter is to set forth standards for the disposition of such claims as it
8 relates to vehicles that are to be repaired in auto body repair shops in the state of Rhode Island.

9 The director of the department of business regulation shall promulgate rules and
10 regulations not inconsistent with purpose of this chapter.

11 **27-10.4-2. Definitions. –** (1) “Automobile body shop” referred to as “auto body shop”,
12 means and includes any establishment, garage, or work area enclosed within a building where
13 repairs are made or caused to be made to motor vehicle bodies, including fenders, bumpers,
14 chassis and similar components of motor vehicle bodies as distinguished from the seats, motor,
15 transmission, and other accessories for propulsion and general running gear of motor vehicles,
16 except as provided in section 5-38-20;

17 (2) “Claimant” means a person, other than the insured, who claims that the insured is
18 legally liable to them for damages resulting from an act, occurrence or other covered event as a

1 result of which the insured's policy may be obligated to provide coverage;

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

4 (4) "Insurer" means any person, reciprocal exchange, interinsurer, Lloyds insurer,
5 fraternal benefit society, and any other legal entity engaged in the business of insurance,
6 including agents, brokers, insurance producers, adjusters and third-party administrators. For the
7 purposes of this chapter, the entities in this subdivision shall be deemed to be engaged in the
8 business of insurance and subject to this chapter;

9 (5) "Motor Vehicle" means any automobile, truck, or other self-propelled vehicle of any
10 type; and

11 (6) "Person" means any natural or artificial entity including, but not limited to,
12 individuals, partnerships, associations, trusts or corporations, or limited liability corporations.

13 **27-10.4-3. Rental vehicles.** – It is an improper claim settlement practice for any
14 domestic, or foreign insurer transacting business in this state, or any employee or agent of the
15 insurer to:

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

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

30 **27-10.4-4. Steering prohibited.** – It is an improper claim settlement practice for any
31 domestic, foreign, or alien insurer transacting business in this state, or any employee or agent of
32 the insurer to:

33 (1) Require that repairs be made to an automobile at a specified auto body repair shop or
34 interfering with the insured's or claimant's free choice of repair facility. The insured or claimant

1 shall be promptly informed by the insurer of his or her free choice in the selection of an auto body
2 repair shop. Once the insured or claimant has advised the insurer that an auto body repair shop
3 has been selected, the insurer may not recommend that a different auto body repair shop be
4 selected to repair the automobile. An auto body repair shop may file a complaint with the
5 department of business regulation alleging a violation of this subdivision. Whenever the
6 department of business regulation has reason to believe that an insurer has violated this
7 subsection, the department shall conduct an investigation and may convene a hearing. A
8 complaint filed by an auto body repair shop must be accompanied by a statement written and
9 signed by the insured or claimant setting forth the factual basis of the complaint, and the insured
10 or claimant must voluntarily appear and testify at any administrative proceedings on the
11 complaint.

12 **27-10.4-5. Procedure pages.** – It is an improper claim settlement practice for any
13 domestic, foreign, or alien insurer transacting business in this state, or any employee or agent of
14 the insurer to:

15 (1) Modify any published manual (i.e., Motor, Mitchell or any automotive appraisal
16 system) relating to auto body repair without prior agreement between the parties;

17 (2) Fail to use a manual or system in its entirety in the appraisal of a motor vehicle;

18 (3) Refuse to compensate an auto body shop for documented charges as identified
19 through industry recognized software programs or systems for paint and refinishing materials in
20 auto body repair claims; and/or

21 (4) Fail to comply with the requirements of section 31-47-12.1.

22 (5) Nothing contained in subdivisions 27-10.4-5(1)(2), and (3) of this chapter shall be
23 construed to interfere with an auto body repair facility's contract with an insurance company.

24 (6) If an insurance company and auto body shop have contracted under a direct repair
25 program or any similar program thereto the provisions of subdivisions 27-10.4-5(1), (2), and (3)
26 shall not apply.

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

30 **27-10.4-6. Total losses.** – It is an improper claim settlement practice for any domestic,
31 foreign, or alien insurer transacting business in this state, or any employee or agent of the insurer
32 to:

33 (1) Deem a motor vehicle a total loss if the cost to rebuild or reconstruct the motor
34 vehicle to its pre-accident condition is less than seventy-five percent (75%) of the "fair market

1 value” of the motor vehicle immediately preceding the time it was damaged.

2 (2) “Fair market value” means the retail value of a motor vehicle as set forth in a current
3 edition of a nationally recognized compilation of retail values commonly used by the automotive
4 industry to establish values of motor vehicles.

5 (3) Nothing herein shall be construed to require a vehicle be deemed a total loss if the
6 total cost to rebuild or reconstruct the motor vehicle to its pre-accident condition is greater than
7 seventy-five percent (75%) of the fair market value of the motor vehicle immediately preceding
8 the time it was damaged.

9 **27-10.4-7. Appraisals required.** – It is an improper claim settlement practice for any
10 domestic, foreign, or alien insurer transacting business in this state, or any employee or agent of
11 the insurer to:

12 (1) Fail to have an appraisal performed by a licensed appraiser where the motor vehicle
13 has sustained damage estimated to exceed two thousand five hundred dollars (\$2,500). Said
14 licensed appraiser referred to herein must be unaffiliated with the repair facility repairing the
15 subject motor vehicle; and

16 (2) Fail to perform a supplemental appraisal inspection of a vehicle within four (4)
17 business days after a request is received from an auto body shop.

18 **27-10.4-8. Agreed price for repairs to motor vehicles.** – (a) When determining the
19 amount an insurer must pay for repair a damaged motor vehicle, every insurer, agent, and
20 employee must:

21 (1) Negotiate in good faith with an auto body shop chosen by an insured or claimant; and

22 (2) Reach an agreed price with the auto body shop chosen by the insured or claimant to
23 repair the vehicle to pre-accident condition. In reaching an agreed price with the chosen auto
24 body shop, an insurer must negotiate all aspects of the repair in good faith, including, but not
25 limited to, the auto body labor rate charged by the auto body shop.

26 (b) If an insurer and an auto body shop do not reach an agreed price to repair the vehicle
27 to pre-accident condition, the insurer may not:

28 (1) Delay concluding the claim and must promptly issue payment for the amount it
29 determined; or

30 (2) Require an insured or claimant to have the repairs performed at a different auto body
31 shop.

32 (c) If an insurer and auto body shop do not reach an agreed price, the auto body shop may
33 assert a civil action against the insurer, its employees and agents for all amounts in dispute and
34 any other damages resulting therefrom pursuant to section 27-10.4-10.

1 **27-10.4-9. Penalties.** – For each violation of this chapter, the offending insurance
2 company, its employees and agents, shall be fined a sum not to exceed five thousand dollars
3 (\$5,000) by the department of business regulation.

4 **27-10.4-10. Private actions.** – (1) Any insured or claimant, or licensed auto body repair
5 facility may bring an action for money damages against an insurer, its employees and agents, as a
6 result of the use or employment by an insurer, employee, agent, or person of a method, act or
7 practice declared unlawful by sections 27-10.4-3, 27-10.4-5, 27-10.4-6, and 27-10.4-8.
8 Notwithstanding any provisions of law to the contrary, all such actions may be brought in the
9 small claims, district, and superior court of the state of Rhode Island in the county in which the
10 insurer maintains its principal place of business. If the insurer is a foreign entity all such actions
11 shall be brought in the county in which the party bringing the action resides.

12 (2) In any action brought under this section, in addition to the relief provided in this
13 section, the court may award, in its discretion, punitive damages, reasonable attorneys' fees and
14 costs, and may provide other equitable relief that it deems necessary or proper.

15 (3) Notwithstanding any provision of the public or general laws to the contrary, this
16 chapter shall not be construed to prevent an insured or claimant from assigning its rights to an
17 auto body shop for any claims arising out of the damage to its motor vehicle.

18 **27-10.4-11. Severability.** – If any provision of this chapter or the application of the
19 provision to any person or circumstances shall be held invalid, the remainder of the chapter and
20 the application of the provision to any person or circumstances other than those as to which it is
21 held invalid shall not be affected by that invalidity.

22 SECTION 2. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
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- 1 This act would set forth standards for the disposition of motor vehicle property damage
- 2 claims that are to be repaired in auto body repair shops in Rhode Island.
- 3 This act would take effect upon passage.

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