

2017 -- H 5951 SUBSTITUTE A

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LC002037/SUB A
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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2017

A N A C T

RELATING TO INSURANCE - UNFAIR COMPETITION AND PRACTICES

Introduced By: Representatives Blazejewski, Shekarchi, Maldonado, Hearn, and Tanzi

Date Introduced: March 17, 2017

Referred To: House Corporations

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 27-29-2 and 27-29-4 of the General Laws in Chapter 27-29
2 entitled "Unfair Competition and Practices" are hereby amended to read as follows:

3 **27-29-2. Definitions.**

4 When used in this chapter:

5 (1) "Commissioner" means director of the department of business regulation;

6 (2) "Consultant" means an individual, partnership, or corporation who, for a fee, holds
7 himself or itself out to the public as engaged in the business of offering any advice, counsel,
8 opinion, or service with respect to the benefits, advantages or disadvantages promised under any
9 policy of insurance that could be issued in this state;

10 (3) "Domestic partnership" means two (2) people who are in an exclusive, intimate and
11 committed relationship with each other, and who certify by affidavit that their relationship meets
12 the following qualifications:

13 (i) Both persons are at least eighteen (18) years of age and are mentally competent to
14 contract;

15 (ii) Neither person is currently married to someone else;

16 (iii) The persons are not related by blood to a degree that would prohibit marriage in the
17 state of Rhode Island;

18 (iv) The persons reside together and have resided together for at least one year prior to
19 the date of the certified affidavit;

1 (v) The persons are financially interdependent as evidenced by two (2) of the following:

2 (A) A domestic partnership agreement or relationship contract;

3 (B) A joint mortgage or joint ownership of a primary residence;

4 (C) Two (2) of the following:

5 (I) Joint ownership of a motor vehicle;

6 (II) A joint checking account;

7 (III) A joint credit account;

8 (IV) A joint lease; and/or

9 (D) One person has been designated as a beneficiary for the other person's will,
10 retirement contract, or life insurance.

11 ~~(3)~~(4) "Insured" means the party named on a policy or certificate as the individuals with
12 legal rights to the benefits provided by the policy;

13 ~~(4)~~(5) "Insurer" means any person, reciprocal exchange, interinsurer, Lloyds insurer,
14 fraternal benefit society, and any other legal entity engaged in the business of insurance,
15 including agents, brokers, insurance producers, adjusters and third party administrators.
16 Notwithstanding any other provision of law, insurer shall also mean a nonprofit hospital and/or
17 medical service corporation, a nonprofit dental service corporation, a nonprofit optometric service
18 corporation, a nonprofit legal service corporation, a health maintenance organization as defined in
19 the general laws, or any other entity providing a plan of health benefits. For the purposes of this
20 act, the entities in this subdivision shall be deemed to be engaged in the business of insurance and
21 subject to this chapter;

22 ~~(5)~~(6) "License" means any license, certificate of authority, certificate of compliance, or
23 other formal approval or authorization granted by the department of business regulation, division
24 of insurance;

25 ~~(6)~~(7) "Person" means any natural or artificial entity, including but not limited to, an
26 individual, corporation, association, partnership, trust, or any other legal entity; and

27 ~~(7)~~(8) "Policy" or "certificate" means any contract of insurance, indemnity, medical,
28 health, or hospital service, suretyship, or annuity issued, proposed for issuance, or intended for
29 issuance by any insurer.

30 **27-29-4. Unfair methods of competition and unfair or deceptive acts or practices**
31 **defined.**

32 The following are defined as unfair methods of competition and unfair and deceptive acts
33 or practices in the business of insurance:

34 (1) Misrepresentations and false advertising of policies or contracts. Making, issuing,

1 circulating, or causing to be made, issued, or circulated, any estimate, illustration, circular, or
2 statement, sales presentation, omission, or comparison misrepresenting the terms of any policy
3 issued or to be issued or the benefits, conditions, or advantages promised by any policy or the
4 dividends or share of the surplus to be received on any policy, or making any false or misleading
5 statement as to the dividends or share of surplus previously paid on any policy, or making any
6 misleading representation or any misrepresentation as to the financial condition of any insurer, or
7 as to the legal reserve system upon which any life insurer operates, or using any name or title of
8 any policy or class of policies misrepresenting the true nature of that policy or class of policies, or
9 making any misrepresentation to any policyholder insured in any company including any
10 intentional misquote of a premium rate, for the purpose of inducing or tending to induce the
11 policyholder to lapse, forfeit, or surrender his or her insurance, or misrepresenting for the purpose
12 of effecting a pledge or assignment of or effecting a loan against any policy, or misrepresenting
13 any policy as being share or stock;

14 (2) False information and advertising generally. Making, publishing, disseminating,
15 circulating, or placing before the public or causing, directly or indirectly, to be made, published,
16 disseminated, circulated, or placed before the public in a newspaper, magazine, or other
17 publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over any radio or
18 television station, or in any other way, an advertisement, announcement, or statement containing
19 any assertion, representation, or statement with respect to the business of insurance or with
20 respect to any person in the conduct of his or her insurance business which is untrue, deceptive,
21 or misleading;

22 (3) Defamation. Making, publishing, disseminating, or circulating, directly or indirectly,
23 or aiding, abetting, or encouraging the making, publishing, disseminating, or circulating of any
24 oral or written statement or any pamphlet, circular, article of literature which is false or
25 maliciously critical of or derogatory to the financial condition of an insurer, and which is
26 calculated to injure any person engaged in the business of insurance;

27 (4) Boycott, coercion, and intimidation. Entering into any agreement to commit, or by
28 any concerted action committing, any act of boycott, coercion, or intimidation resulting in or
29 tending to result in unreasonable restraint of, or monopoly in, the business of insurance;

30 (5) (i) False financial statements. Knowingly filing with any supervisory or other public
31 official, or knowingly making, publishing, disseminating, circulating, or delivering to any person,
32 or placing before the public or causing directly or indirectly, to be made, published, disseminated,
33 circulated, delivered to any person, or placed before the public any false material statement of
34 financial condition of an insurer; or

1 (ii) Knowingly making any false entry of a material fact in any book, report, or statement
2 of any insurer or knowingly omitting to make a true entry of any material fact pertaining to the
3 business of the insurer in any book, report, or statement of the insurer;

4 (6) Stock operations and advisory board contracts. Issuing or delivering or permitting
5 agents, officers, or employees to issue or deliver agency company stock or other capital stock, or
6 benefit certificates or shares in any common law corporation, or securities of any special or
7 advisory board contracts or other contracts of any kind promising returns and profits as an
8 inducement to insurance;

9 (7) (i) Unfair discrimination. Making or permitting any unfair discrimination between
10 individuals of the same class and equal expectation of life in the rates charged for any policy of
11 life insurance or of life annuity or in the dividends or other benefits payable on any such policy or
12 life annuity, or in any other of the terms and conditions of the policy; or

13 (ii) Making or permitting any unfair discrimination between individuals of the same class
14 and of essentially the same hazard in the amount of premium, policy fees, or rates charged for any
15 policy or contract of accident or health insurance or in the benefits payable under any policy or
16 contract, or in any of the terms or conditions of that policy, or in any other manner;

17 (iii) Making or permitting any unfair discrimination between individuals or risks of the
18 same class and of essentially the same hazards by refusing to issue, refusing to renew, canceling,
19 or limiting the amount of insurance coverage on a property or casualty risk because of the
20 geographic location of the risk, unless:

21 (A) The refusal, cancellation, or limitation is for a business purpose that is not a pretext
22 for unfair discrimination; or

23 (B) The refusal, cancellation, or limitation is required by law or regulation;

24 (iv) Making or permitting any unfair discrimination between individuals or risks of the
25 same class and of essentially the same hazards by refusing to issue, refusing to renew, canceling,
26 or limiting the amount of insurance coverage on a residential property risk, or the personal
27 property contained in the residential property risk, because of the age of the residential property,
28 unless:

29 (A) The refusal, cancellation, or limitation is for a business purpose that is not a pretext
30 for unfair discrimination; or

31 (B) The refusal, cancellation, or limitation is required by law or regulation;

32 (v) Refusing to insure, refusing to continue to insure, or limiting the amount of coverage
33 available to an individual because of the sex or marital status of the individual; nothing in this
34 subsection shall prohibit an insurer from taking marital status into account for the purpose of

1 defining persons eligible for dependent benefits; ~~or~~

2 (vi) To terminate, or to modify coverage, or to refuse to issue or refuse to renew any
3 property or casualty policy solely because the applicant or insured or any employee of either is
4 mentally or physically impaired; provided, that this subsection shall not apply to accident and
5 health insurance sold by a casualty insurer and, provided that this subsection shall not be
6 interpreted to modify any other provision of law relating to the termination, modification,
7 issuance or renewal of any insurance policy or contract; or

8 (vii) Making or permitting any unfair discrimination by treating persons in a domestic
9 partnership as defined in §27-29-2, differently than persons in a marriage for the purposes of
10 premiums, policy fees or rates charged for policies of casualty, fire, homeowners, accident and
11 sickness, marine or automobile insurance;

12 (8) (i) Rebates. Except as otherwise expressly provided by law, knowingly permitting or
13 offering to make or making any policy or agreement as to the policy other than as plainly
14 expressed in the policy issued on it, or paying or allowing or giving or offering to pay, allow, or
15 give, directly or indirectly, as inducement to the policy, any rebate of premiums payable on the
16 policy, or any special favor or advantage in the dividends or other benefits on the policy, or any
17 valuable consideration or inducement not specified in the policy, or giving, selling, or purchasing
18 or offering to give, sell, or purchase as inducement to the policy, or in connection with the policy,
19 any stocks, bonds, or other securities of any insurance company or other corporation, association,
20 or partnership, or any dividends or profits accrued on the security, or anything of value not
21 specified in the policy;

22 (ii) Nothing in subdivision (7) of this section or paragraph (i) of this subdivision shall be
23 construed as including within the definition of discrimination or rebates any of the following
24 practices:

25 (A) In the case of any contract of life insurance policies or life annuity, annuities paying
26 bonuses to policyholders or abating their premiums in whole or in part out of surplus accumulated
27 from nonparticipating insurance; provided, that any bonuses or abatement of premiums shall be
28 fair and equitable to policyholders and for the best interests of the company and its policyholders;

29 (B) In the case of life insurance policies issued on the industrial debit plan, making
30 allowance to policyholders who have continuously for a specified period made premium
31 payments directly to an office of the insurer in an amount which fairly represents the saving in
32 collection expenses; and

33 (C) Readjustment of the rate of premium for a group insurance policy based on the loss or
34 expense experience under it, at the end of the first or any subsequent policy year of insurance

1 under the policy, which may be made retroactive only for the policy year;

2 (9) (i) Free choice of insurance producer or insurer. When any person, firm, or
3 corporation engaged in the business of lending money on the security of real or personal property,
4 or in the business of negotiating, purchasing, selling, or holding loans on the security of real
5 property, or in the business of building, selling, or financing the sale or purchase of real property,
6 or any trustee, director, officer, agent, or other employee of that person, firm, or corporation,
7 requires that property insurance be procured for the property, the borrower, debtor, or purchaser
8 shall have free choice of insurance producer and insurer through or by which the insurance is to
9 be placed or written, subject only to the right of the builder, creditor, lender, or seller:

10 (A) To require evidence, to be produced at a reasonable time prior to commencement or
11 renewal of risk, that the insurance providing reasonable coverage has been obtained in an amount
12 equal to the amount required by the builder, creditor, lender, or seller;

13 (B) To require insurance in an insurer authorized to do business and having a licensed
14 resident insurance producer agent in this state; and

15 (C) To refuse to accept insurance in a particular insurer on reasonable grounds related to
16 solvency;

17 (ii) When any contractor or subcontractor is required to procure a surety bond or policy
18 of insurance with respect to any building or construction contract which is about to be, or which
19 has been bid or entered into, the contractor or subcontractor shall have free choice of insurance
20 producer and insurer through or by which the surety bond or insurance is to be written; provided,
21 that the owner or contractor shall have the right: (A) to require evidence, to be produced at a
22 reasonable time prior to commencement or renewal of risk, that the insurance providing
23 reasonable coverage has been obtained in an amount equal to the amount required by the builder,
24 creditor, lender, or seller; (B) to require insurance in an insurer authorized to do business and
25 having a licensed resident insurance producer in this state; and (C) to refuse to accept insurance in
26 a particular insurer on reasonable grounds related to solvency; provided, that the owner or
27 contractor shall have the right to approve the form, sufficiency, or manner of execution of the
28 surety bond or policy or insurance furnished by the insurance company or insurance producer
29 selected by the contractor or subcontractor;

30 (iii) No person who lends money or extends credit may:

31 (A) Solicit insurance for the protection of real property after a person indicates interest in
32 securing a first mortgage credit extension until that person has received a commitment in writing
33 from the lender as to a loan or credit extension;

34 (B) Unreasonably reject a policy furnished by the borrower for the protection of the

1 property securing the creditor lien. A rejection shall not be deemed unreasonable if it is based on
2 reasonable standards, uniformly applied, relating to the extent of coverage required and the
3 financial soundness and the services of an insurer. The standards shall not discriminate against
4 any particular type of insurer, nor shall the standards call for rejection of a policy because it
5 contains coverage in addition to that required in the credit transaction;

6 (C) Require that any borrower, mortgagor, purchaser, insurer, or insurance producer pay
7 a separate charge, in connection with the handling of any policy required as security for a loan on
8 real estate, or pay a separate charge to substitute the policy of one insurer for that of another. This
9 subsection does not include the interest that may be charged on premium loans or premium
10 advancements in accordance with the terms of the loan or credit document;

11 (D) Use or disclose, without the prior written consent of the borrower, mortgagor, or
12 purchaser taken at a time other than the making of the loan or extension of credit, information
13 relative to a policy which is required by the credit transaction, for the purpose of replacing the
14 insurance; or

15 (E) Require any procedures or conditions of duly licensed insurance producers or insurers
16 not customarily required of those insurance producers or insurers affiliated or in any way
17 connected with the person who lends money or extends credit;

18 (iv) Every person who lends money or extends credit and who solicits insurance on real
19 and personal property subject to paragraph (iii) of this subdivision shall explain to the borrower in
20 writing that the insurance related to the credit extension may be purchased from an insurer or
21 insurance producer of the borrower's choice, subject only to the lender's right to reject a given
22 insurer or insurance producer as provided in paragraph (iii)(B) of this subdivision. Compliance
23 with disclosures as to insurance required by truth in lending laws or comparable state laws shall
24 be compliance with this subsection;

25 (v) This requirement for a commitment shall not apply in cases where the premium for
26 the required insurance is to be financed as part of the loan or extension of credit involving
27 personal property transactions;

28 (vi) The commissioner shall have the power to examine and investigate those insurance
29 related activities of any person or insurer that the commissioner believes may be in violation of
30 this section. Any affected person may submit to the commissioner a complaint or material
31 pertinent to the enforcement of this section;

32 (vii) Nothing in this section shall prevent a person who lends money or extends credit
33 from placing insurance on real or personal property in the event the mortgagor, borrower, or
34 purchaser has failed to provide required insurance in accordance with the terms of the loan or

1 credit document;

2 (viii) Nothing contained in this section shall apply to credit life or credit accident and
3 health insurance.

4 (10) Notice of free choice of insurance producer or insurer. Every debtor, borrower, or
5 purchaser of property with respect to which insurance of any kind on the property is required in
6 connection with a debt or loan secured by the property or in connection with the sale of the
7 property, shall be informed in writing by the builder, creditor, lender, or seller, of his or her right
8 of free choice in the selection of the insurance producer and insurer through or by which the
9 insurance is to be placed. There shall be no interference, either directly or indirectly, with the
10 borrower's, debtor's, or purchaser's free choice of an insurance procedure and of an insurer which
11 complies with the requirements of this section, and the builder, creditor, lender, seller, owner, or
12 contractor shall not refuse the policy tendered by the borrower, debtor, purchaser, contractor, or
13 subcontractor. Upon notice of any refusal of the tendered policy, the insurance commissioner
14 shall order the builder, creditor, lender, seller, owner, or contractor to accept the tendered policy,
15 if the commissioner determines that the refusal is not in accordance with the requirements of this
16 section. Failure to comply with an order of the insurance commissioner shall be deemed a
17 violation of this section;

18 (11) Using insurance information to detriment of another. Whenever the instrument
19 requires that the purchaser, mortgagor, or borrower furnish insurance of any kind on real property
20 being conveyed or is collateral security to a loan, the mortgagee, vendor, or lender shall refrain
21 from disclosing or using any and all insurance information to his or her or its own advantage and
22 to the detriment of either the borrower, purchaser, mortgagor, insurance company, or agency
23 complying with the requirements relating to insurance;

24 (12) Prohibited group enrollments. No insurer shall offer more than one group policy of
25 insurance through any person unless that person is licensed, at a minimum, as an insurance
26 producer. This prohibition shall not apply to employer-employee relationships, or to any of these
27 enrollments;

28 (13) Failure to maintain complaint handling procedures. No insurer shall fail to maintain
29 a complete record of all the complaints it received since the date of its last examination pursuant
30 to the general laws providing for examination of insurers. This record shall indicate the total
31 number of complaints, their classification by line of insurance, the nature of each complaint, the
32 disposition of each complaint, and the time it took to process each complaint. For the purposes of
33 this subsection, "complaint" means any written communication primarily expressing a grievance;

34 (14) Misrepresentation in insurance applications. Making false or fraudulent statements

1 or representations on or relative to an application for a policy, for the purpose of obtaining a fee,
2 commission, money, or other benefit from any insurers, insurance producer, or individual person;

3 (15) Requiring that repairs be made to an automobile at a specified auto body repair shop
4 or interfering with the insured's or claimant's free choice of repair facility. The insured or
5 claimant shall be promptly informed by the insurer of his or her free choice in the selection of an
6 auto body repair shop. Once the insured or claimant has advised the insurer that an auto body
7 repair shop has been selected, the insurer may not recommend that a different auto body repair
8 shop be selected to repair the automobile. An auto body repair shop may file a complaint with the
9 department of business regulation alleging a violation of this subdivision (15). Whenever the
10 department of business regulation has reason to believe that an insurer has violated this
11 subdivision (15), the department shall conduct an investigation and may convene a hearing. A
12 complaint filed by an auto body repair shop must be accompanied by a statement written and
13 signed by the insured or claimant setting forth the factual basis of the complaint, and the insured
14 or claimant must voluntarily appear and testify at any administrative proceedings on the
15 complaint; and

16 (16) Requiring that motor vehicle glass repair be made at a specified motor vehicle glass
17 repair shop or interfering with the insured's or claimant's free choice of a licensed repair facility.
18 The insured or claimant shall be promptly informed by the insurer of his or her free choice in the
19 selection of a licensed motor vehicle glass repair shop. The insurer shall not require a person to
20 use or employ unfair or deceptive acts or practices, threaten, coerce, or intimidate to induce a
21 person to use or select a particular licensed motor vehicle glass repair shop to provide motor
22 vehicle glass repair services. An insurer shall not knowingly contract with, refer motor vehicle
23 glass repair services to, or otherwise negotiate with an unlicensed motor vehicle glass repair shop,
24 as defined in chapter 38.5 of title 5. Once the insured or claimant has advised the insurer that a
25 motor vehicle glass repair shop has been selected, the insurer may not recommend that a different
26 motor vehicle glass repair shop be selected to repair the motor vehicle glass, and an insurer shall
27 not assign or dispatch the repair work or forward a related policy or policyholder's contact or
28 repair scheduling information to a different licensed motor vehicle glass repair shop without the
29 knowledge and consent of the insured. An insured may at any point in time elect to change the
30 insured's choice of licensed motor vehicle glass repair shop. However, an insurer authorized to
31 conduct business in the state may provide directly, or through other means, including electronic
32 transmissions, specific, truthful and non-deceptive information regarding the features and benefits
33 available to the insured under the policy to assist the insured in selecting a licensed motor vehicle
34 glass repair shop or scheduling a licensed motor vehicle glass repair shop to perform motor

1 vehicle glass repair, or enter into any preferred provider agreements and/or participate in direct
2 repair programs or direct repair networks with licensed motor vehicle glass repair shops. A motor
3 vehicle glass repair shop may file a complaint with the department of business regulation alleging
4 a violation of subsection (16) of this section. Whenever the department of business regulation has
5 reason to believe that an insurer has violated subsection (16) of this section, the department shall
6 conduct an investigation and may convene a hearing. A complaint filed by a motor vehicle glass
7 repair shop must be accompanied by a statement written and signed by the insured or claimant
8 setting forth the factual basis of the complaint, and the insured or claimant must voluntarily
9 appear and testify at any administrative proceedings on the complaint.

10 SECTION 2. This act shall take effect upon passage and apply to all policies issued or
11 renewed on or after January 1, 2018.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T
RELATING TO INSURANCE - UNFAIR COMPETITION AND PRACTICES

1 This act would define a domestic partnership and prohibit insurance companies from any
2 distinction or discrimination against individuals in a domestic partner relationship regarding fees
3 for policies issued or renewed in this state.

4 This act would take effect upon passage and would apply to all policies issued or
5 renewed on or after January 1, 2018.

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