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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2010

A N A C T

RELATING TO INSURANCE -- UNFAIR COMPETITION AND PRACTICES

Introduced By: Representative Michael J. Marcello

Date Introduced: February 23, 2010

Referred To: House Corporations

It is enacted by the General Assembly as follows:

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

3 **27-29-4. Unfair methods of competition and unfair or deceptive acts or practices**
4 **defined.** -- The following are defined as unfair methods of competition and unfair and deceptive
5 acts or practices in the business of insurance:

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

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

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

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

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

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

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

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

34 (ii) Making or permitting any unfair discrimination between individuals of the same

1 class and of essentially the same hazard in the amount of premium, policy fees, or rates charged
2 for any policy or contract of accident or health insurance or in the benefits payable under any
3 policy or contract, or in any of the terms or conditions of that policy, or in any other manner;

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

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

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

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

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

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

19 (v) Refusing to insure, refusing to continue to insure, or limiting the amount of coverage
20 available to an individual because of the sex or marital status of the individual; nothing in this
21 subsection shall prohibit an insurer from taking marital status into account for the purpose of
22 defining persons eligible for dependent benefits; or

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

29 (8) (i) Rebates. - Except as otherwise expressly provided by law, knowingly permitting
30 or offering to make or making any policy or agreement as to the policy other than as plainly
31 expressed in the policy issued on it, or paying or allowing or giving or offering to pay, allow, or
32 give, directly or indirectly, as inducement to the policy, any rebate of premiums payable on the
33 policy, or any special favor or advantage in the dividends or other benefits on the policy, or any
34 valuable consideration or inducement not specified in the policy, or giving, selling, or purchasing

1 or offering to give, sell, or purchase as inducement to the policy, or in connection with the policy,
2 any stocks, bonds, or other securities of any insurance company or other corporation, association,
3 or partnership, or any dividends or profits accrued on the security, or anything of value not
4 specified in the policy;

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

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

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

16 (C) Readjustment of the rate of premium for a group insurance policy based on the loss
17 or expense experience under it, at the end of the first or any subsequent policy year of insurance
18 under the policy, which may be made retroactive only for the policy year;

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

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

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

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

34 (ii) When any contractor or subcontractor is required to procure a surety bond or policy

1 of insurance with respect to any building or construction contract which is about to be, or which
2 has been bid or entered into, the contractor or subcontractor shall have free choice of insurance
3 producer and insurer through or by which the surety bond or insurance is to be written; provided,
4 that the owner or contractor shall have the right: (A) to require evidence, to be produced at a
5 reasonable time prior to commencement or renewal of risk, that the insurance providing
6 reasonable coverage has been obtained in an amount equal to the amount required by the builder,
7 creditor, lender, or seller; (B) to require insurance in an insurer authorized to do business and
8 having a licensed resident insurance producer in this state; and (C) to refuse to accept insurance in
9 a particular insurer on reasonable grounds related to solvency; provided, that the owner or
10 contractor shall have the right to approve the form, sufficiency, or manner of execution of the
11 surety bond or policy or insurance furnished by the insurance company or insurance producer
12 selected by the contractor or subcontractor;

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

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

17 (B) Unreasonably reject a policy furnished by the borrower for the protection of the
18 property securing the creditor lien. A rejection shall not be deemed unreasonable if it is based on
19 reasonable standards, uniformly applied, relating to the extent of coverage required and the
20 financial soundness and the services of an insurer. The standards shall not discriminate against
21 any particular type of insurer, nor shall the standards call for rejection of a policy because it
22 contains coverage in addition to that required in the credit transaction;

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

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

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

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

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

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

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

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

21 (10) Notice of free choice of insurance producer or insurer. - Every debtor, borrower, or
22 purchaser of property with respect to which insurance of any kind on the property is required in
23 connection with a debt or loan secured by the property or in connection with the sale of the
24 property, shall be informed in writing by the builder, creditor, lender, or seller, of his or her right
25 of free choice in the selection of the insurance producer and insurer through or by which the
26 insurance is to be placed. There shall be no interference, either directly or indirectly, with the
27 borrower's, debtor's, or purchaser's free choice of an insurance procedure and of an insurer which
28 complies with the requirements of this section, and the builder, creditor, lender, seller, owner, or
29 contractor shall not refuse the policy tendered by the borrower, debtor, purchaser, contractor, or
30 subcontractor. Upon notice of any refusal of the tendered policy, the insurance commissioner
31 shall order the builder, creditor, lender, seller, owner, or contractor to accept the tendered policy,
32 if the commissioner determines that the refusal is not in accordance with the requirements of this
33 section. Failure to comply with an order of the insurance commissioner shall be deemed a
34 violation of this section;

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

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

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

18 (14) Misrepresentation in insurance applications. - Making false or fraudulent statements
19 or representations on or relative to an application for a policy, for the purpose of obtaining a fee,
20 commission, money, or other benefit from any insurers, insurance producer, or individual person;
21 and

22 (15) Requiring that repairs be made to an automobile at a specified auto body repair shop
23 or interfering with the insured's or claimant's free choice of repair facility. - The insured or
24 claimant shall be promptly informed by the insurer of his or her free choice in the selection of an
25 auto body repair shop and of the repair options available to them. ~~Once~~ Thereafter, if the insured
26 or claimant ~~has advised~~ advises the insurer that an auto body repair shop has been selected, the
27 insurer may not recommend that a different auto body repair shop be selected to repair the
28 automobile unless requested to do so by the insured or claimant. An auto body repair shop may
29 file a complaint with the department of business regulation alleging a violation of this subdivision
30 (15). Whenever the department of business regulation has reason to believe that an insurer has
31 violated this subdivision (15), the department shall conduct an investigation and may convene a
32 hearing. A complaint filed by an auto body repair shop must be accompanied by a statement
33 written and signed by the insured or claimant setting forth the factual basis of the complaint, and
34 the insured or claimant must voluntarily appear and testify at any administrative proceedings on

1 the complaint.

2 SECTION 2. 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 COMPETITION AND PRACTICES

1 This act would require insurance companies to inform the insured or claimant who is
2 having repairs to an automobile of their right to free choice in selecting an auto body repair shop,
3 and of the repair options available to the insured or claimant. This act would further prohibit
4 insurance companies from recommending a different auto body repair shop.

5 This act would take effect upon passage.

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