

2023 -- H 5855 SUBSTITUTE A

LC001988/SUB A

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2023

A N A C T

RELATING TO INSURANCE -- UNFAIR CLAIMS PRACTICES ACT

Introduced By: Representatives O'Brien, McEntee, Craven, Caldwell, Dawson, Serpa,
Bennett, Diaz, Vella-Wilkinson, and Slater

Date Introduced: March 01, 2023

Referred To: House Corporations

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 27-9.1-4, of the General Laws in Chapter 27-9.1 entitled "Unfair
2 Claims Settlement Practices Act" is hereby amended to read as follows:

3 **27-9.1-4. "Unfair claims practices" defined.**

4 (a) Any of the following acts by an insurer, if committed in violation of § 27-9.1-3,
5 constitutes an unfair claims practice:

6 (1) Misrepresenting to claimants and insured relevant facts or policy provisions relating to
7 coverage at issue;

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

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

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

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

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

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

- 1 (8) Attempting to settle or settling claims for less than the amount that a reasonable person
2 would believe the insured or beneficiary was entitled by reference to written or printed advertising
3 material accompanying or made part of an application;
- 4 (9) Attempting to settle or settling claims on the basis of an application that was materially
5 altered without notice to, or knowledge or consent of, the insured;
- 6 (10) Making claims payments to an insured or beneficiary without indicating the coverage
7 under which each payment is being made;
- 8 (11) Unreasonably delaying the investigation or payment of claims by requiring both a
9 formal proof of loss form and subsequent verification that would result in duplication of
10 information and verification appearing in the formal proof of loss form;
- 11 (12) Failing in the case of claims denials or offers of compromise settlement to promptly
12 provide a reasonable and accurate explanation of the basis of those actions;
- 13 (13) Failing to provide forms necessary to present claims within ten (10) calendar days of
14 a request with reasonable explanations regarding their use;
- 15 (14) Failing to adopt and implement reasonable standards to assure that the repairs of a
16 repairer owned by or required to be used by the insurer are performed in a workmanlike manner;
- 17 (15) Misleading a claimant as to the applicable statute of limitations;
- 18 (16) Failing to respond to a claim within thirty (30) days, unless the insured shall agree to
19 a longer period;
- 20 (17) Engaging in any act or practice of intimidation, coercion, threat, or misrepresentation
21 of consumers rights, for or against any insured person, claimant, or entity to use a particular rental
22 car company for motor vehicle replacement services or products; provided, however, nothing shall
23 prohibit any insurance company, agent, or adjuster from providing to such insured person, claimant,
24 or entity the names of a rental car company with which arrangements have been made with respect
25 to motor vehicle replacement services; provided, that the rental car company is licensed pursuant
26 to § 31-5-33;
- 27 (18) Refusing to honor a “direction to pay” executed by an insured, claimant, indicating
28 that the insured or claimant wishes to have the insurance company directly pay his or her motor
29 vehicle replacement vehicle rental benefit to the rental car company of the consumer’s choice;
30 provided, that the rental car company is licensed pursuant to § 31-5-33. Nothing in this section shall
31 be construed to prevent the insurance company’s ability to question or challenge the amount
32 charged, in accordance with its policy provisions, and the requirements of the department of
33 business regulation; provided that, the insurance company promptly notifies the rental car company
34 in writing of the reason. The written notification shall be made at or before the time that the

1 insurance company submits payment to the rental car company;

2 (19) Modifying any published manual, i.e., Motor's Auto Repair Manual, Mitchells, or any
3 automated appraisal system, relating to auto body repair without prior agreement between the
4 parties;

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

6 (21) Refusing to compensate an auto body shop for its documented charges as identified,
7 ~~through~~ and based on, the most current version of automotive industry-recognized software
8 programs or systems for paint, body, and refinishing materials ~~in auto body repair claims~~, utilized
9 in auto body repair, including, but not limited to, programs such as Mitchell's RMC, PMC Logic,
10 Paint, Micromix, or ~~a~~ other paint manufacturer's programs. An insurer shall not discount
11 documented charges by failing to use a system in its entirety, including an automotive industry
12 standard markup;

13 (22) Refusing to acknowledge and compensate an auto body repairer for documented
14 procedures identified as necessary by the original equipment manufacturer, paint manufacturer,
15 when included in the repairer's appraisal, or when requested by the repairer (i.e., components that
16 cannot be reused/reinstalled: requiring clips, retainers, and hardware);

17 ~~(22)~~(23) Failing to comply with the requirements of § 31-47-12.1;

18 ~~(23)~~(24) Failure to have an appraisal performed by a licensed appraiser where the motor
19 vehicle has sustained damage estimated to exceed two thousand five hundred dollars (\$2,500). The
20 licensed appraiser referred to herein must be unaffiliated with the repair facility repairing the
21 subject motor vehicle; must perform a physical inspection of the damaged motor vehicle; and may
22 not perform an appraisal based upon pictures of the damaged motor vehicle;

23 (25) Failure of an insurer's assigned appraiser, or representative, to promptly schedule an
24 appointment for an appraisal of a damaged vehicle with the auto body repair shop, at an agreed
25 upon date and time, between normal business hours;

26 ~~(24)~~(26) Failure to perform an initial appraisal within three (3) business days after a request
27 is received from an auto body repair shop, provided the damaged motor vehicle is on the premises
28 of the repair shop when the request is made, and failure to perform a supplemental appraisal
29 inspection of a vehicle within four (4) business days after a request is received from an auto body
30 repair shop. If the insurer's appraiser fails to inspect the damaged motor vehicle within the allotted
31 number of business days for an initial appraisal or a supplemental appraisal, the insurer shall forfeit
32 its right to inspect the damaged vehicle prior to repairs, and negotiations shall be limited to labor
33 and the price of parts and shall not, unless objective evidence to the contrary is provided by the
34 insurer, involve disputes as to the existence of damage or the chosen manner of repair. The time

1 limitations set forth in this subsection may be extended by mutual agreement between the auto body
2 repair shop and the insurer;

3 (27) Refusing to extend the rental vehicle coverage requirements of an insured or claimant
4 proportionally to claim delays caused by the insurer.

5 ~~(25)~~(28) Designating a motor vehicle a total loss if the cost to rebuild or reconstruct the
6 motor vehicle to its pre-accident condition is less than seventy-five percent (75%) of the “fair
7 market value” of the motor vehicle immediately preceding the time it was damaged:

8 (i) For the purposes of this subdivision, “fair market value” means the retail value of a
9 motor vehicle as set forth in a current edition of a nationally recognized compilation of retail values
10 commonly used by the automotive industry to establish values of motor vehicles;

11 (ii) Nothing herein shall be construed to require a vehicle be deemed a total loss if the total
12 cost to rebuild or reconstruct the motor vehicle to its pre-accident condition is greater than seventy-
13 five percent (75%) of the fair market value of the motor vehicle immediately preceding the time it
14 was damaged;

15 (iii) Nothing herein shall prohibit an insurance company from agreeing to deem a vehicle
16 a total loss at the vehicle owner’s request and with the vehicle owner’s express written authorization
17 if the cost to rebuild or reconstruct the motor vehicle to its pre-accident condition is less than
18 seventy-five percent (75%) of the “fair market value” of the motor vehicle immediately preceding
19 the time it was damaged;

20 (iv) If condition adjustments are made to the retail value of a motor vehicle designated a
21 total loss, all such adjustments must be in accordance with the standards set forth in the current
22 edition of a nationally recognized compilation of retail values, commonly used by the automotive
23 industry, used by the insurer to determine the retail value of the vehicle; and all such adjustments,
24 including prior damage deductions, must be itemized, fair, and reasonable; and

25 (v) When a vehicle is deemed a total loss, if the insurer is not retaining the salvage, the
26 insurer must notify the owner of the vehicle in writing of the requirements of obtaining both a
27 salvage title and a reconstructed title from the department of motor vehicles pursuant to chapter 1
28 of title 31, and must obtain, in writing, the owner’s consent and acknowledgement that the insurer
29 is not retaining the salvage and include a statement of the owner’s obligation and potential costs to
30 dispose of or otherwise retain the salvage;

31 ~~(26)~~(29) Negotiating, or effecting the settlement of, a claim for loss or damage covered by
32 an insurance contract with an unlicensed public adjuster acting on behalf of an insured. Nothing
33 contained in this section shall be construed to preclude an insurer from dealing with any individual
34 or entity that is not required to be licensed under chapter 10 of title 27;

1 ~~(27)~~(30) Refusing to pay an auto body repair shop for documented necessary sublet
2 services paid out to vendors or incurred by the auto body repair shop, for specialty or unique
3 services performed in the overall repair process, including costs and labor incurred to research,
4 coordinate, administrate, or facilitate the necessary sublet service, and an automotive industry
5 standard markup. Examples of sublet services include, but are not limited to, towing, transportation,
6 suspension, alignments, electronic calibrations, diagnostic work, mechanical work, and paid
7 charges to release a vehicle.

8 (b)(1) Nothing contained in subsections (a)(19), (a)(20), and (a)(21) of this section shall be
9 construed to interfere with an auto body repair facility's contract with an insurance 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 (a)(19), (a)(20), and
12 (a)(21) of this section 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 SECTION 2. Section 27-10.1-6 of the General Laws in Chapter 27-10.1 entitled "Motor
17 Vehicle Damage Appraisers" is hereby amended to read as follows:

18 **27-10.1-6. Conduct of motor vehicle damage appraisers.**

19 (a) Each appraiser, while engaged in appraisal duties, shall carry the license issued to that
20 appraiser by the department of business regulation and shall display it, upon request, to an owner
21 whose vehicle is being inspected, to the auto body shop representative involved, or to any
22 authorized representative of the department of business regulation.

23 **(b) An insurer's assigned appraiser, or representative, shall promptly schedule an**
24 **appointment for appraisal of a damaged vehicle with the auto body repair shop, at an agreed upon**
25 **date and time, between normal business hours.**

26 ~~(b)~~(c) The appraiser shall leave a legible copy of his or her appraisal with the auto body
27 shop selected to make the repairs, which appraisal shall contain the name of the insurance company
28 ordering it, if any, the insurance file number, the number of the appraiser's license, and the proper
29 identification number of the vehicle being inspected, and notice in boldface type, reading as
30 follows:

31 "PURSUANT TO RHODE ISLAND LAW, THE CONSUMER HAS THE RIGHT TO
32 CHOOSE THE REPAIR FACILITY TO COMPLETE REPAIRS TO A MOTOR VEHICLE; AND
33 AN INSURANCE COMPANY MAY NOT INTERFERE WITH THE CONSUMER'S CHOICE
34 OF REPAIRER." All damage unrelated to the incident or accident that occasioned the appraisal of

1 the vehicle, or old damage, shall be clearly indicated in the appraisal.

2 ~~(d)~~ The appraiser shall not obtain a competitive estimate from another auto body shop
3 unless the owner of that other shop, or his or her authorized agent, has inspected the vehicle. No
4 competitive estimate shall be obtained by the use of photographs, telephone calls, or in any manner
5 other than a personal inspection.

6 ~~(e)~~ No appraiser shall request that repairs be made in a specified auto body shop.

7 ~~(f)~~ Every appraiser shall re-inspect damaged vehicles when supplementary allowances
8 are requested by the auto body shops.

9 ~~(g)~~ No appraiser shall receive directly or indirectly any gratuity or other consideration
10 in connection with his or her appraisal services from any person except his or her employer, or, if
11 self-employed, his or her customers.

12 ~~(h)~~ No appraiser shall traffic in automobile salvage if it is obtained in any way as a result
13 of appraisal services rendered by the appraiser.

14 ~~(i)~~ No appraiser shall obtain an estimate from an unlicensed automobile body repair
15 shop nor shall any appraiser agree on a price for repairing a damaged motor vehicle with an
16 unlicensed automobile body repair shop. Nothing contained in this section shall be construed to
17 preclude an appraiser from dealing with any entity not subject to the licensing provisions of § 5-
18 38-4.

19 SECTION 3. Title 27 of the General Laws entitled "INSURANCE" is hereby amended by
20 adding thereto the following chapter:

21 CHAPTER 10.4

22 MOTOR VEHICLE APPRAISAL PROVISION

23 **27-10.4-1. Motor vehicle appraisal provision.**

24 (a) When the insurance company and the insured or claimants fail to agree on the amount
25 of a loss, either has the right to exercise the independent appraisal process outlined in this section.
26 Agreements by the parties shall be binding. Each shall select a disinterested Rhode Island licensed
27 appraiser. The insurer's chosen appraiser shall inspect the damaged motor vehicle within three (3)
28 business days after the written demand is received; provided, the damaged motor vehicle is on the
29 premises of the repair shop when the request is made. If the insurer's appraiser fails to inspect the
30 damaged motor vehicle within the three (3) business days the insurer shall forfeit its right to inspect
31 the damaged vehicle prior to repairs, and negotiations shall be limited to labor and the price of parts
32 and shall not, unless objective evidence to the contrary is provided by the insurer, involve disputes
33 as to the existence of damage or the chosen manner of repair. The time limitations set forth in this
34 subsection may be extended by mutual agreement between the auto body repair shop and the

1 insurer.

2 (b) If the two (2) appraisers fail to agree on the amount of the loss, the insurer and the
3 insured or claimant shall select an impartial Rhode Island licensed appraiser as an umpire appraiser.
4 If the two (2) appraisers are unable to agree upon an umpire within three (3) business days, the
5 party making the initial demand for the loss to be set by appraisal shall select an umpire. The
6 appraisers shall then submit their differences to the umpire appraiser. The umpire appraiser shall
7 render a decision within three (3) business days, and written agreement by any two (2) of the three
8 (3) shall set the amount of the loss. The time limitations set forth in this subsection may be extended
9 by mutual agreement between the auto body repair shop and the insurer;

10 (c) The insurer shall not engage in any act or practice of intimidation, coercion, threat, or
11 misrepresentation of consumer rights, for or against and insured person, claimant, or entity chosen
12 in this process.

13 SECTION 4. 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 PRACTICES ACT

- 1 This act would amend the definition of unfair claims settlement practices by insurers and
- 2 motor vehicle damage appraisers, and would create a chapter providing for the appraisal of
- 3 damaged motor vehicles, when the insurer and the insured cannot agree on the amount of the loss.
- 4 This act would take effect upon passage.

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