

**2009 -- S 0667 SUBSTITUTE A**

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LC01325/SUB A  
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**STATE OF RHODE ISLAND**

**IN GENERAL ASSEMBLY**

**JANUARY SESSION, A.D. 2009**

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A N A C T

RELATING TO INSURANCE

Introduced By: Senator Leo R. Blais

Date Introduced: February 26, 2009

Referred To: Senate Corporations

It is enacted by the General Assembly as follows:

1           SECTION 1. Section 27-2-14 of the General Laws in Chapter 27-2 entitled "Foreign  
2 Insurance Companies" is hereby amended to read as follows:

3           **27-2-14. Forwarding of process by commissioner.** -- (a) Whenever lawful process  
4 against ~~an~~ a foreign insurance company shall be served upon the insurance commissioner, the  
5 commissioner shall forward a copy of the process served on him or her, by mail, postpaid, and  
6 directed to the person appointed by the insurance company to accept service of process on behalf  
7 of the company. ~~secretary of the company, or in the case of companies of foreign countries, to the~~  
8 ~~resident manager, if any, in this country.~~

9           (b) Service upon the insurance commissioner shall be accomplished by regular mail or by  
10 whatever alternative method is designated by the commissioner.

11           (c) For each copy of process the insurance commissioner shall collect, for the use of the  
12 state, the sum of twenty-five dollars (\$25.00), which shall be paid by the plaintiff at the time of  
13 the service; the fee is to be recovered by the plaintiff as part of the taxable costs, if he or she  
14 prevails in the suit.

15           SECTION 2. Section 27-3-38 of the General Laws in Chapter 27-3 entitled "Agents,  
16 Brokers, and Solicitors" is hereby amended to read as follows:

17           **27-3-38. Surplus line brokers -- License -- Affidavit of inability to obtain insurance -**  
18 **- Reports and records -- Premium tax -- Notice to purchasers.** -- (a) The insurance  
19 commissioner may issue a surplus line broker's license to any person who or which is licensed as

1 a property and casualty insurance producer in this state, authorizing the licensee to procure,  
2 subject to the restrictions provided in this section, policies of insurance, except life and health and  
3 accident, from insurers which are on the commissioner's list of approved surplus insurers in this  
4 state. This license may be suspended or revoked by the insurance commissioner whenever, in the  
5 commissioner's judgment, a suspension or revocation will best promote the interest of the people  
6 of this state. Before any license is issued by the insurance commissioner and before each renewal  
7 of a license, there shall be filed in his or her office a written application by the person desiring the  
8 license in the form or forms and supplements to the form, and containing any information, that  
9 the insurance commissioner may prescribe.

10 (b) A Rhode Island resident business entity acting as a surplus line broker may elect to  
11 obtain a surplus line broker license. Application shall be made using the uniform business entity  
12 application. Prior to approving the application, the commissioner shall find both of the following:

13 (1) The business entity has paid the appropriate fees.

14 (2) The business entity has designated a licensed surplus line broker responsible for the  
15 business entity's compliance with the insurance laws and rules of this state.

16 (c) When any policy of insurance is procured under the authority of that license, there  
17 shall be executed, both by the licensee and by the insured, affidavits setting forth facts showing  
18 that the insured or a licensed Rhode Island producer were unable, after diligent effort, to procure  
19 from no less than three (3) authorized insurers the full amount of insurance required to protect the  
20 property owned or controlled by the insured or the risks insured. Provided, however the  
21 aforementioned affidavit shall not be required when insuring the following interest: amusement  
22 parks and devices, environmental improvement and/or remediation sites, vacant property or  
23 property under renovation, demolition operations, event cancellation due to weather, railroad  
24 liability, discontinued products, fireworks and pyrotechnics, warehouseman's legal liability,  
25 excess property coverage, and contingent liability. For purposes of this section, residual market  
26 mechanisms shall not be considered authorized insurers. Prior to renewing, continuing, or  
27 extending any policy, the licensed surplus line broker must confirm that the insurer is on the  
28 insurance commissioner's list of approval surplus line insurers in this state.

29 (d) The licensee shall keep a complete and separate record of all policies procured from  
30 approved surplus lines insurers under the license and these records shall be open to the  
31 examination of both the insurance commissioner and tax administrator at all reasonable times,  
32 and shall show the exact amount of each kind of insurance permitted under this section which has  
33 been procured for each insured, the gross premiums charged by the insurers for each kind of  
34 insurance permitted under this section which were returned to each insured, the name of the

1 insurer or insurers which issued each of these policies, the effective dates of these policies, and  
2 the terms for which these policies were issued. The licensee shall file a yearly report with the  
3 insurance commissioner on a form prescribed by the insurance commissioner showing the  
4 business procured under the surplus line license for the preceding calendar year, and the report  
5 shall be due annually on or before April 1.

6 (e) Every person, firm, or corporation licensed pursuant to the provisions of this section  
7 shall file with the insurance commissioner, at the time of the insurance producer license renewal,  
8 ~~a certificate of the tax administrator, on a blank furnished by the insurance commissioner,~~  
9 ~~certifying that the~~ sufficient information as determined by the insurance commissioner whether a  
10 licensee or a person acting on the licensees behalf, has paid to the tax administrator, for all  
11 policies procured by the licensee pursuant to the license during the next preceding calendar year,  
12 a tax, computed at the rate of three percent (3%) on the gross premiums charged the insured by  
13 the insurers, less the amount of premiums returned to the insured.

14 (f) Every application form for insurance from a surplus lines insurer, every affidavit  
15 form executed by the insured, and every policy (on its front and declaration pages) issued by the  
16 surplus lines insurer, shall contain in ten (10) point type the following notice:

17 NOTICE

18 THIS INSURANCE CONTRACT HAS BEEN PLACED WITH AN INSURER NOT  
19 LICENSED TO DO BUSINESS IN THE STATE OF RHODE ISLAND BUT APPROVED AS  
20 A SURPLUS LINES INSURER. THE INSURER IS NOT A MEMBER OF THE RHODE  
21 ISLAND INSURERS INSOLVENCY FUND. SHOULD THE INSURER BECOME  
22 INSOLVENT, THE PROTECTION AND BENEFITS OF THE RHODE ISLAND INSURERS  
23 INSOLVENCY FUND ARE NOT AVAILABLE.

24 SECTION 3. Section 27-7-2.5 of the General Laws in Chapter 27-7 entitled "Liability  
25 Insurance" is hereby amended to read as follows:

26 **27-7-2.5. Minimum coverage -- Medical payments.** -- (a) No policy insuring against  
27 loss resulting from liability imposed by law, or for injuries caused by a motor vehicle collision or  
28 for injuries arising out of the ownership, maintenance, or use of a motor vehicle, shall be  
29 delivered or issued in this state unless coverage is provided in the policy for medical payments in  
30 an amount of not less than twenty-five hundred dollars (\$2,500) for each individual and five  
31 thousand dollars (\$5,000) aggregate for the protection of persons injured regardless of the fault of  
32 the injured person; provided, that the named insured shall have the right to reject that coverage: in  
33 writing.

34 (b) The insurer or any affiliated insurer shall be required to notify the policy holder in

1 any renewal policy as to the availability of medical payments coverage. Unless the insured named  
2 in the policy requests medical payments coverage in writing, that coverage need not be provided  
3 in any subsequent policy issued by the same insurer or any affiliate for motor vehicles owned by  
4 the named insured, including, but not limited to, renewal, reinstatement, substitute, amended,  
5 modified, transfer, or replacement policies where the named insured has rejected the coverage in  
6 connection with the policy previously issued to the insured by the same insurer or an affiliate.

7 SECTION 4. Section 27-10-8 of the General Laws in Chapter 27-10 entitled "Claim  
8 Adjusters" is hereby amended to read as follows:

9 **27-10-8. Emergency licenses.** -- (a) Notwithstanding any of the provisions of this  
10 chapter, the commissioner may permit an experienced adjuster to act as an adjuster in this state ~~on~~  
11 ~~homeowners' losses~~ without a Rhode Island license if:

12 (1) The adjuster is either a licensed adjuster in another state which requires a license or  
13 regularly adjusts in another state where such licensing is not required and works for an insurance  
14 company authorized to do business in Rhode Island;

15 (2) He or she is engaged in emergency insurance adjustment work during the period of  
16 emergency only, as determined by the commissioner.

17 (b) The experienced adjuster may work in this state either for an employer who is an  
18 adjuster licensed by this state, or for a regular employer of one or more adjusters licensed by this  
19 state, or for an insurance company authorized to do business in this state; provided, that the  
20 employer or insurer shall furnish to the commissioner a notice in writing or electronically  
21 promptly after the beginning of any emergency insurance adjustment work. The adjuster may  
22 adjust claims from within or outside the state.

23 Emergency licenses permitted under this section shall not exceed one hundred twenty  
24 (120) days, unless extended by the commissioner.

25 (c) As used in this section, "emergency insurance adjustment work" includes, but is not  
26 limited to:

27 (1) Adjustment of a single loss or losses arising out of an event or catastrophe common  
28 to all of those losses; or

29 (2) Adjustment of losses in any area declared to be a state of disaster by the governor of  
30 the state of Rhode Island or by the president of the United States under applicable federal law.

31 SECTION 5. Section 27-20.1-5 of the General Laws in Chapter 27-20.1 entitled  
32 "Nonprofit Dental Service Corporations" is hereby amended to read as follows:

33 **27-20.1-5. Examination of affairs of corporation.** -- It is the duty of the director of  
34 business regulation at least every ~~three (3)~~ five (5) years to make an examination of the financial

1 condition and methods of doing business of every nonprofit dental service corporation. The  
2 examination shall be performed, and the associated costs shall be borne by the company, in  
3 accordance with all provisions of chapter 13.1 of this title.

4 SECTION 6. Section 27-29-13.2 of the General Laws in Chapter 27-29 entitled "Unfair  
5 Competition and Practices" is hereby amended to read as follows:

6 **27-29-13.2. Cancellation provisions for return of unearned premium.** -- Every  
7 insurance policy issued and approved for use in Rhode Island shall provide clear language on the  
8 method of calculation of the unearned premium portion to be returned to the insured if the policy  
9 is cancelled. Insurance policies shall not state "refer to manuals" to determine the amount of  
10 unearned premium to be returned. For all cancellations, the actual percentage retained by the  
11 insurer shall be discernible in the policy cancellation provisions. If a policy is canceled using a  
12 short-rate table, the insurer shall provide the short-rate table within the cancellation provisions of  
13 the insurance policy so that an insured can make an informed decision when cancelling a policy  
14 midterm. Insurers shall not impose cancellation fees when insurance policies are cancelled using  
15 short rate tables.

16 SECTION 7. Chapter 27-29 of the General Laws entitled "Unfair Competition and  
17 Practices" is hereby amended by adding thereto the following section:

18 **27-29-13.3. Fraud Warning.** -- Notwithstanding any similar requirements in title 28,  
19 every claim form and application for insurance, regardless of the form of transmission, shall  
20 contain the following statement or a substantially similar statement; provided, that this section  
21 shall not apply to any claim form for health insurance which is on a form promulgated by the  
22 centers for Medicare and Medicaid Services, or in electronic format pursuant to 45 C.F.R. Part  
23 162. "Any person who knowingly presents a false or fraudulent claim for payment of a loss or  
24 benefit or knowingly presents false information in an application for insurance is guilty of a crime  
25 and may be subject to fines and confinement in prison."

26 SECTION 8. Section 27-34.3-14 of the General Laws in Chapter 27-34.3 entitled "Rhode  
27 Island Life and Health Insurance Guaranty Association Act" is hereby amended to read as  
28 follows:

29 **27-34.3-14. Miscellaneous provisions.** -- (a) This chapter shall not be construed to  
30 reduce the liability for unpaid assessments of the insureds of an impaired or insolvent insurer  
31 operating under a plan with assessment liability; ~~provided, however, this chapter shall not be~~  
32 ~~construed to reduce the liability for unpaid assessments of the insureds of an impaired or~~  
33 ~~insolvent insurer operating under a plan with assessment liability prior to January 1, 1996.~~

34 (b) Records shall be kept of all meetings of the board of directors to discuss the activities

1 of the association in carrying out its powers and duties under section 27-34.3-8. The records of  
2 the association with respect to an impaired or insolvent insurer shall not be disclosed prior to the  
3 termination of a liquidation, rehabilitation or conservation proceeding involving the impaired or  
4 insolvent insurer, upon the termination of the impairment or insolvency of the insurer, or upon the  
5 order of a court of competent jurisdiction. Nothing in this subsection shall limit the duty of the  
6 association to render a report of its activities under section 27-34.3-15.

7 (c) For the purpose of carrying out its obligations under this chapter, the association shall  
8 be deemed to be a creditor of the impaired or insolvent insurer to the extent of assets attributable  
9 to covered policies reduced by any amounts to which the association is entitled as subrogee  
10 pursuant to section 27-34.3-8(k). Assets of the impaired or insolvent insurer attributable to  
11 covered policies shall be used to continue all covered policies and pay all contractual obligations  
12 of the impaired or insolvent insurer as required by this chapter. Assets attributable to covered  
13 policies, as used in this subsection, are that proportion of the assets which the reserves that should  
14 have been established for covered policies bear to the reserves that should have been established  
15 for all policies of insurance written by the impaired or insolvent insurer.

16 (d) As a creditor of the impaired or insolvent insurer as established in subsection (c) of  
17 this section and consistent with section 27-14.3-38, the association and other similar associations  
18 shall be entitled to receive a disbursement of assets out of the marshalled assets, from time to time  
19 as the assets become available to reimburse it, as a credit against contractual obligations under  
20 this chapter. If the liquidator has not, within one hundred twenty (120) days of a final  
21 determination of insolvency of an insurer by the receivership court, made an application to the  
22 court for the approval of a proposal to disperse assets out of marshalled assets to guaranty  
23 associations having obligations because of the insolvency, then the association shall be entitled to  
24 make application to the receivership court for approval of its own proposal to disburse these  
25 assets.

26 (e) (1) Prior to the termination of any liquidation, rehabilitation or conservation  
27 proceeding, the court may take into consideration the contributions of the respective parties,  
28 including the association, the shareholders, and policy owners of the insolvent insurer, and any  
29 other party with a bona fide interest, in making an equitable distribution of the ownership rights  
30 of the insolvent insurer. In that determination, consideration shall be given to the welfare of the  
31 policy owners of the continuing or successor insurer.

32 (2) No distribution to stockholders, if any, of an impaired or insolvent insurer shall be  
33 made until and unless the total amount of valid claims of the association with interest on the  
34 claims for funds expended in carrying out its powers and duties under section 27-34.3-8 with

1 respect to the insurer have been fully recovered by the association.

2 (f) (1) If an order for liquidation or rehabilitation of an insurer domiciled in this state has  
3 been entered, the receiver appointed under the order shall have a right to recover on behalf of the  
4 insurer, from any affiliate that controlled it, the amount of distributions, other than stock  
5 dividends paid by the insurer on its capital stock, made at any time during the five (5) years  
6 preceding the petition for liquidation or rehabilitation subject to the limitations of subdivisions (2)  
7 -- (4) of this subsection.

8 (2) No distribution shall be recoverable if the insurer shows that when paid the  
9 distribution was lawful and reasonable, and that the insurer did not know and could not  
10 reasonably have known that the distribution might adversely affect the ability of the insurer to  
11 fulfill its contractual obligations.

12 (3) Any person who was an affiliate that controlled the insurer at the time the  
13 distributions were paid shall be liable up to the amount of distributions received. Any person who  
14 was an affiliate who controlled the insurer at the time the distributions were declared, shall be  
15 liable up to the amount of distributions which would have been received if they had been paid  
16 immediately. If two (2) or more persons are liable with respect to the same distributions, they  
17 shall be jointly and severally liable.

18 (4) The maximum amount recoverable under this subsection shall be the amount needed  
19 in excess of all other available assets of the insolvent insurer to pay the contractual obligations of  
20 the insolvent insurer.

21 (5) If any person liable under subdivision (3) of this subsection is insolvent, all its  
22 affiliates that controlled it at the time the distribution was paid, shall be jointly and severally  
23 liable for any resulting deficiency in the amount recovered from the insolvent affiliate.

24 SECTION 9. Sections 3, 6, 7 and 8 shall take effect on January 1, 2010. Sections 1, 2, 4,  
25 5 shall take effect upon passage.

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EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF  
A N A C T  
RELATING TO INSURANCE

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1           This act is an omnibus bill which would clarify and amend certain sections of insurance  
2 law.

3           Sections 3, 6, 7 and 8 shall take effect on January 1, 2010. Sections 1, 2, 4, 5 shall take  
4 effect upon passage.

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