

**STATE OF RHODE ISLAND**

**IN GENERAL ASSEMBLY**

**JANUARY SESSION, A.D. 2004**

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A N A C T

RELATING TO INSURANCE -- UNFAIR COMPETITION AND PRACTICES

Introduced By: Representatives Moura, Schadone, and Long

Date Introduced: March 04, 2004

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 hereby defined as unfair methods of competition and unfair and  
5 deceptive 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 thereby or the dividends  
10 or share of the surplus to be received thereon, or making any false or misleading statement as to  
11 the dividends or share of surplus previously paid on any policy, or making any misleading  
12 representation or any misrepresentation as to the financial condition of any insurer, or as to the  
13 legal reserve system upon which any life insurer operates, or using any name or title of any policy  
14 or class of policies misrepresenting the true nature thereof, or making any misrepresentation to  
15 any policyholder insured in any company including any intentional misquote of a premium rate,  
16 for the purpose of inducing or tending to induce the policyholder to lapse, forfeit, or surrender his  
17 or her insurance, or misrepresenting for the purpose of effecting a pledge or assignment of or  
18 effecting a loan against any policy, or misrepresenting any policy as being share or stock;

19           (2) False information and advertising generally. - Making, publishing, disseminating,

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

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

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

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

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

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

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

33 (ii) Making or permitting any unfair discrimination between individuals of the same  
34 class and of essentially the same hazard in the amount of premium, policy fees, or rates charged

1 for any policy or contract of accident or health insurance or in the benefits payable thereunder, or  
2 in any of the terms or conditions of that policy, or in any other manner whatever;

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

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

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

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

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

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

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

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

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

1 association, or partnership, or any dividends or profits accrued thereon, or anything of value  
2 whatsoever not specified in the policy;

3 (ii) Nothing in subsection (7) or subsection (8)(i) shall be construed as including within  
4 the definition of discrimination or rebates any of the following practices:

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

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

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

17 (9) Free choice of insurance producer or insurer. - (i) When any person, firm, or  
18 corporation engaged in the business of lending money on the security of real or personal property,  
19 or in the business of negotiating, purchasing, selling, or holding loans on the security of real  
20 property, or in the business of building, selling, or financing the sale or purchase of real property,  
21 or any trustee, director, officer, agent, or other employee of that person, firm, or corporation,  
22 requires that property insurance be procured for the property, the borrower, debtor, or purchaser  
23 shall have free choice of insurance producer and insurer through or by which the insurance is to  
24 be placed or written, subject only to the right of the builder, creditor, lender, or seller (A) to  
25 require evidence, to be produced at a reasonable time prior to commencement or renewal of risk,  
26 that the insurance providing reasonable coverage has been obtained in an amount equal to the  
27 amount required by the builder, creditor, lender, or seller; (B) to require insurance in an insurer  
28 authorized to do business and having a licensed resident insurance producer agent in this state;  
29 and (C) to refuse to accept insurance in a particular insurer on reasonable grounds related to  
30 solvency;

31 (ii) When any contractor or subcontractor is required to procure a surety bond or policy  
32 of insurance with respect to any building or construction contract which is about to be, or which  
33 has been bid or entered into, the contractor or subcontractor shall have free choice of insurance  
34 producer and insurer through or by which the surety bond or insurance is to be written; provided,

1 however, that the owner or contractor shall have the right (A) to require evidence, to be produced  
2 at a reasonable time prior to commencement or renewal of risk, that the insurance providing  
3 reasonable coverage has been obtained in an amount equal to the amount required by the builder,  
4 creditor, lender, or seller; (B) to require insurance in an insurer authorized to do business and  
5 having a licensed resident insurance producer in this state; and (C) to refuse to accept insurance in  
6 a particular insurer on reasonable grounds related to solvency; and, provided further, however,  
7 that the owner or contractor shall have the right to approve the form, sufficiency, or manner of  
8 execution of the surety bond or policy or insurance furnished by the insurance company or  
9 insurance producer selected by the contractor or subcontractor;

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

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

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

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

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

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

32 (iv) Every person who lends money or extends credit and who solicits insurance on real  
33 and personal property subject to subsection (9)(iii) shall explain to the borrower in writing that  
34 the insurance related to the credit extension may be purchased from an insurer or insurance

1 producer of the borrower's choice, subject only to the lender's right to reject a given insurer or  
2 insurance producer as provided in subsection (9)(iii)(B). Compliance with disclosures as to  
3 insurance required by truth in lending laws or comparable state laws shall be compliance with this  
4 subsection;

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

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

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

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

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

32 (11) Using insurance information to detriment of another. - Whenever the instrument  
33 requires that the purchaser, mortgagor, or borrower furnish insurance of any kind on real property  
34 being conveyed or is collateral security to a loan, the mortgagee, vendor, or lender shall refrain

1 from disclosing or using any and all insurance information to his or her or its own advantage and  
2 to the detriment of either the borrower, purchaser, mortgagor, insurance company, or agency  
3 complying with the requirements relating to insurance;

4 (12) Prohibited group enrollments. - No insurer shall offer more than one group policy of  
5 insurance through any person unless that person is licensed, at a minimum, as an insurance  
6 producer. However, this prohibition shall not apply to employer/employee relationships, nor to  
7 any such enrollments;

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

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

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

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

EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF  
A N A C T  
RELATING TO INSURANCE -- UNFAIR COMPETITION AND PRACTICES

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1           This act would provide that auto body repair shops may file a complaint accompanied by  
2 an affidavit from the insured with the department of business regulation for an insurer interfering  
3 with the insured's or claimant's free choice of repair facility.

4           This act would also require that any proof of insurance state that an individual has the  
5 right to select a qualified auto repair facility of his, her or its own choice.

6           This act would take effect upon passage.

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LC02822/SUB A/2  
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