

**State of Rhode Island and Providence Plantations  
DEPARTMENT OF BUSINESS REGULATION**

*Division of Insurance*

**1511 Pontiac Avenue, Bldg. 69-2  
Cranston, Rhode Island 02920**

**Public Notice of Proposed Rule-Making**

Pursuant to the provisions of R.I. Gen. Laws § 27-9.1-1 *et seq* and in accordance with the Administrative Procedures Act Chapter 42-35 of the General Laws, the Department of Business Regulation hereby gives notice of its intent to amend Insurance Regulation 73 – Unfair Property/Casualty Claims Settlement Practices.

The purpose of this amendment is to address the recent enactment of R.I. Gen. Laws 27-9.1-4 (25) regarding total loss vehicles; to bring the remaining portions of the regulation into conformance with the NAIC model other than those areas for which there is specific Rhode Island language, to address issues that have arisen since the last amendment of this regulation and to incorporate the substance of bulletins previously issued by the Department into the regulation.

The proposed regulation and concise summary of non-technical amendments are available for public inspection at [www.dbr.ri.gov](http://www.dbr.ri.gov), in person at Department of Business Regulation, 1511 Pontiac Avenue, Cranston, Rhode Island 02920, or by email [elizabeth.dwyer@dbr.ri.gov](mailto:elizabeth.dwyer@dbr.ri.gov) or by calling Elizabeth Kelleher Dwyer at (401) 462 9520.

In the development of the proposed amendment consideration was given to: (1) alternative approaches; (2) overlap or duplication with other statutory and regulatory provisions; and (3) significant economic impact on small business. No alternative approach, duplication, or overlap was identified based upon available information.

All interested parties are invited to submit written or oral comments concerning the proposed regulations by September 17, 2013 to Elizabeth Kelleher Dwyer, Department of Business Regulation, 1511 Pontiac Avenue, Cranston, Rhode Island 02920, [elizabeth.dwyer@dbr.ri.gov](mailto:elizabeth.dwyer@dbr.ri.gov). A public hearing to consider the proposed amendment shall be held on September 17, 2013 at 10:00 a.m. at 1511 Pontiac Avenue, Cranston, Rhode Island 02920 at which time and place all persons interested therein will be heard.

All are welcome at the Rhode Island Department of Business Regulation ("DBR"). If any reasonable accommodation is needed to ensure equal access, service or participation, please contact DBR at 401-462-9551, RI Relay at 7-1-1, or email [directorofficeinquiry@dbr.ri.gov](mailto:directorofficeinquiry@dbr.ri.gov) at least three (3) business days prior to the hearing.

Paul McGreevy  
Director, Department of Business Regulation

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**1511 Pontiac Avenue, Bldg. 69-2**  
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**Concise Summary of Proposed Non-technical Amendments  
To Insurance Regulation Number 73**

In accordance with the Administrative Procedures Act, Section 42-35-3(a)(1) of the General Laws of Rhode Island, following is a concise summary of proposed non-technical amendments:

1. Section 2 makes changes to language to conform to the current version of the NAIC model act.
2. Section 3 amends definition of “automobile body shop” to bring it into conformance with R.I. Gen. Laws 5-38-20; amends definitions of claimant, claim file, first party claimant, investigation, notification of claim and third party claimant; adds definitions of agent, fair market value, written communication and writing and removes definitions of communication, damaged motor vehicle body part, insured, insurer, person and policy.
3. Section 4 amends the language of existing provisions to bring them into conformance with the current version of the NAIC model act.
4. Section 5 amends the language to bring it into conformance with the current version of the NAIC model act and adds three provisions from the model which are not included in the current version of the regulation.
5. Section 6 amends the language to bring it into conformance with the current version of the NAIC model act; adds one provision from the model and deletes a provision which has been moved to section 8 of the regulation.
6. Section 7 amends the language to bring it into conformance with the current version of the NAIC model act and adds provisions from the model which are not included in the current version of the regulation. It also deletes a provision that has been moved to section 8 of the regulation.
7. Section 8 adds a new section of total loss vehicles consistent with newly enacted R.I. Gen. Laws 27-9.1-4 (25), amends additional sections to conform with the NAIC model or to address issues that have arisen since the last amendment of this regulation and incorporates the substance of bulletins previously issued by the Department into the regulation.

State of Rhode Island and Providence Plantations  
DEPARTMENT OF BUSINESS REGULATION  
*Division of Insurance*

~~233 Richmond Street~~1511 Pontiac Avenue  
Providence Cranston, RI 0290302920

INSURANCE REGULATION 73

UNFAIR PROPERTY/CASUALTY CLAIMS SETTLEMENT PRACTICES  
**REGULATION**

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***Section 1. Authority***

This Regulation is adopted under the authority of R.I. Gen. Laws § 27-9.1-1 *et seq.* (~~The Unfair Claims Settlement Practices Act~~) and R.I. Gen. Laws § 42-14-17.

***Section 2. Purpose***

The purpose of this Regulation is to establish minimum standards for the investigation and disposition of property and casualty claims arising under insurance ~~P~~Policies or ~~C~~Certificates as defined in this Regulation issued to residents of Rhode Island, ~~and to define procedures and practices which may constitute unfair claims settlement practices. This Regulation does not apply to. It is not intended to cover~~ claims involving workers' compensation, fidelity, suretyship, or boiler and machinery insurance. The various provisions of this regulation are intended to define procedures and practices which constitute unfair claims practices. Nothing herein shall be construed to create nor imply a

private cause of action for violation of this regulation. This is merely a clarification of original intent and does not indicate any change of position.

### ***Section 3. Definitions***

The following terms are defined as follows: All definitions contained in R.I. Gen. Laws §§ 27-9.1-1 et seq, and 27-29-1 et seq. are hereby incorporated by reference. As otherwise used in this regulation:

- A. "Aftermarket Part," as defined in R.I. Gen. Laws § 27-10.2-1, means a motor vehicle body replacement part that is not an original equipment manufacturer part;
- B. "Automobile Body Shop," as defined in R.I. Gen. Laws § 5-38-1, means any establishment, garage, or work area enclosed within a building where repairs are made or caused to be made to motor vehicle bodies, including fenders, bumpers, ~~windshields, glass~~chassis and similar components of motor vehicle bodies as distinguished from the ~~chassis~~, seats, motor, transmission, ~~air conditioning condenser, radiator~~ and other accessories for propulsion and general running gear of motor vehicles, except as ~~excluded~~ provided in R.I. Gen. Laws § 5-38-20;
- C. "Agent" means any individual, corporation, association, partnership or other legal entity authorized to represent an insurer with respect to a claim;
- CD. "Claimant;" means either a first party claimant, a third party claimant, or both and includes the claimant's designated legal representative and includes a member of the claimant's immediate family designated by the claimant except as otherwise specifically provided in Section 9 hereof, means a First or Third Party Claimant as defined in this section;
- DE. "Claim File" means any retrievable electronic file, paper file or combination or both maintained by an Insurer as defined this section in connection with a claim filed with the Insurer;
- ~~E. "Communication" means all written correspondence, memoranda, notes or notifications, e-mail or other electronically generated correspondence regardless of source or type, that is related to the handling of the claim;~~
- ~~F. "Damaged Motor Vehicle Body Part" means any part of the body of a motor vehicle which is damaged as the result of a collision with another motor vehicle or object. Such parts shall include: fenders, bumpers, windshields, glass and similar components of motor vehicle bodies as distinguished from the chassis, seats, motor, transmission, air conditioning condenser, radiator and other accessories for propulsion and general running gear of motor vehicles;~~

- ~~GF.~~ "Days" means business calendar days;
- ~~HG.~~ "Department" means the Rhode Island Department of Business Regulation;
- ~~HI.~~ "Director" means the Director of the Department of Business Regulation or his or her designee;
- ~~IJ.~~ "Division" means the Insurance Division of the Department of Business Regulation;
- ~~KJ.~~ "Documentation" includes, but is not limited to, all pertinent ~~C~~ommunications, transactions, notes, work papers, claim forms, bills, and explanation of benefits forms relative to the claim;
- ~~K.~~ "Fair Market Value" means the retail value of a motor vehicle as set forth in a current edition of a nationally recognized compilation of retail values commonly used by the automotive industry to establish values of motor vehicles.
- ~~LL.~~ "First Party Claimant" means an individual, corporation, association, partnership or other legal entity asserting a right to payment under an insurance policy or insurance contract arising out of the occurrence of the contingency or loss covered by the policy or contract; Insured who asserts a claim against his or her Insurer as defined in this Section;
- ~~M.~~ ~~"Insured" means any Person named on a Policy with legal rights to the benefits provided by the Policy;~~
- ~~N.~~ ~~"Insurer" means any Person engaged in the business of property and casualty insurance;~~
- ~~OM.~~ "Investigation" means all activities of an ~~I~~nsurer directly or indirectly related to the determination of liabilities under coverages afforded by an insurance Ppolicy or insurance contract;
- ~~PN.~~ "Notification of Claim" means any notification, whether in writing or other means, acceptable under the terms of an an insurance Ppolicy to an ~~I~~nsurer or its agent, by a ~~C~~laimant, which reasonably apprises the Insurer of the facts pertinent to a claim;
- ~~OO.~~ "Original equipment manufacturer part" or "OEM part" shall be defined as in R.I. Gen. Laws § 27-10.2-1(2);

~~R.~~ "Person" means any natural or artificial entity including, but not limited to, individuals, partnerships, associations, trusts or corporations, or limited liability corporations;

~~S.~~ "Policy" means any contract of property and/or casualty insurance including but not limited to certificates of such insurance. "Policy" or "Certificate" for purposes of this Regulation shall not mean contracts for workers' compensation, fidelity, suretyship or boiler and machinery insurance;

~~FP.~~ "Replacement Vehicle" means a motor vehicle which is of like kind and quality. A motor vehicle of like kind and quality shall be: (i) manufactured by the same manufacturer; (ii) be the same or newer model year; (iii) have a similar body style; (iv) have similar options and mileage; and (v) be in as good or better overall condition as the motor vehicle deemed to be a total loss; ~~and~~

~~UQ.~~ "Third Party Claimant" means any person asserting a claim against any person under a policy or certificate of an insurer, other than the Insured, who claims that the Insured is legally liable to them for damages resulting from an act, accident, occurrence or other covered event as a result of which the Insured's Policy may be obligated to provide coverage;

~~R.~~ "Writing" includes electronic communications pursuant to R.I. Gen. Laws § 42-127.1-1 *et seq.*

~~S.~~ "Written communications" includes all correspondence, regardless of source or type, that is materially related to the handling of the claim.

#### **Section 4. Claim Files File and Record Documentation**

Each ~~I~~nsurer's ~~C~~laim ~~F~~iles for policies or certificates are subject to examination and investigation by the Director or by the Director's duly appointed designees at any time during the Insurer's normal business hours. To aid in such examination:

~~A.~~ -The Insurer shall maintain claim data that is accessible and retrievable for examination. An insurer shall be able to provide, including, but not limited to, the claim number, line of coverage, date of loss and date of payment of the claim, date of denial or date closed without payment, ~~in a form and manner that is accessible and retrievable for examination by the Director.~~ This data must be available for all open files and for closed files for the current year and four (4) preceding years.

~~B.~~ Detailed documentation shall be contained in each ~~C~~laim ~~F~~ile in order to permit reconstruction of the ~~I~~nsurer's activities relative to each claim.

C. Each relevant document within the Claim File shall be noted as to date received, date processed, or date mailed.

A.D. ~~All~~For those Insurers ~~shall maintain~~that do not maintain hard copy files, Claim Files must be in appropriate electronic media and in a form such that said files can be capable of duplication and reduced to printed paperhard copy.

**Section 5. *Miscellaneous Obligations of Insurer Misrepresentation of Policy Provisions***

A. ~~An~~No Insurer shall fail to fully disclose to its Insured first party claimants all pertinent benefits, coverages, or other provisions of a Policy or contract under which a claim ~~has is been~~ presented.

B. No agent shall conceal from first party claimants benefits, coverages or other provisions of any insurance policy or insurance contract when such benefits, coverages or other provisions are pertinent to a claim.

C. A claim shall not be denied on the basis of failure to exhibit property unless there is documentation of breach of the policy provisions in the claim file.

B.D. ~~An~~No Insurer shall ~~not~~ deny a claim ~~of its Insured because its Insured based upon the failure of a first party claimant has failed~~ to give written notice of loss within a specified time limit; unless the written notice is ~~an~~ express-written Policy condition, or ~~because its Insured has first party claimant's failure~~ to give written notice; after being requested to do so; is so unreasonable as to constitute a breach of the Insured's first party claimant's duty to cooperate ~~under the policy~~ with the Insurer.

C.E. ~~An~~No Insurer shall ~~not~~ indicate to a first party Claimant on a payment draft, check or in any accompanying letter that said payment is "final" or "a release" of any claim or specified part of a claim; unless the Policy limit has been paid or there has been a compromise settlement agreed to by the first party Claimant and the Insurer as to coverage and amount payable under the Policy for any claim or specified part of a claimcontract.

F. No insurer shall issue checks or drafts in partial settlement of a loss or claim under a specific coverage that contains language purporting to release the insurer or its insured from total liability.

**Section 6. *Failure to Acknowledge Pertinent Communications***

D.A. Every Insurer, upon receiving Notification of Claim ~~from Claimant~~ shall, ~~(i)~~ within tenfifteen (105) Days; acknowledge the receipt of such

notice in writing ~~and (ii) unless payment in settlement of that claim is made within that period of time promptly provide necessary forms and instructions necessary to process the claim.~~

- ~~EB.~~ In addition to the requirements in subsection ~~5D6(A)~~, the ~~I~~nsurer upon receiving ~~N~~otification of ~~C~~laim shall inform the ~~C~~laimant in the Insurer's written acknowledgment of receipt of the claim, or sooner if the ~~C~~laimant inquires, if coverage exists for the rental of an automobile comparable to the ~~C~~laimant's damaged vehicle.
- ~~FC.~~ Every ~~I~~nsurer, upon receipt of any inquiry from the Department regarding a claim shall, within ~~fifteen-twenty-one (1521) D~~days of receipt of such inquiry, furnish the Department with an adequate written response to the inquiry ~~in duplicate~~.
- ~~GD.~~ An ~~Insurer shall appropriate~~ reply in writing shall be made within ~~tenfifteen (105) D~~days ~~to all written on all other pertinent~~ ~~C~~ommunications from a ~~C~~laimant which reasonably suggest that a response is expected.
- ~~HE.~~ Upon request by an Automobile Body Shop, an ~~I~~nsurer must notify the Automobile Body Shop of the name(s), address(es), telephone number(s) of any lienholder(s) on the vehicle which is the subject of the claim.
- ~~I.~~ ~~All Insurers shall report all vehicle thefts within thirty (30) Days of the theft and all salvage declarations to the National Insurance Crime Bureau (NICB) or a similar organization, acceptable to the Department, that maintains a central database of automobile theft and salvage.~~
- F. Every insurer, upon receiving notification of claim, shall promptly provide necessary claim forms, instructions and reasonable assistance so that first party claimants can comply with the policy conditions and the insurer's reasonable requirements. Compliance with this paragraph within fifteen (15) days of notification of a claim shall constitute compliance with Subsection A of this section.

**Section 67. Standards for Prompt, Fair and Equitable Settlements Applicable to All Insurers**

- A. ~~Except as provided in section 6B(1) or (2) below, w~~Within ~~fifteen~~twenty one (1521) Ddays after receipt by the ~~I~~nsurer of ~~properly executed proofs of loss notification of the claim~~, the first party ~~C~~laimant shall be advised of the acceptance or denial of the claim by the Insurer. ~~No~~ ~~I~~nsurer shall deny a claim on the grounds of a specific provision, condition, or exclusion ~~in the Policy~~ unless reference to such provision, condition, or exclusion is included in the denial. The denial must be given to the

Claimant in writing and the Claim File of the Insurer shall contain such documentation of the denial as required by section 4.

Where there is a reasonable basis supported by specific information available for review by the insurance regulatory authority that the first party claimant has fraudulently caused or contributed to the loss, the insurer is relieved from the requirements of this subsection; provided, however, that the claimant shall be advised of the acceptance or denial of the claim within a reasonable time for full investigation after receipt by the insurer of a properly executed proof of loss.

- B. ~~(1)~~ — If the Insurer needs more time ~~than provided in section 6A above~~ to determine whether a first party claim should be accepted or denied, it shall notify the first party Claimant within ~~fifteen-twenty-one (15/21)~~ Ddays after receipt of the proofs of loss, giving the reasons more time is needed. If the Investigation remains incomplete, the Insurer shall, forty-five (45) Ddays from the initial notification and every forty-five (45) Ddays thereafter ~~until the claim is accepted or denied~~, send to the Claimant a letter setting forth the reasons additional time is needed for Investigation.
- ~~(2)~~ — ~~If the Insurer needs more time than provided in subsection 6(A) above to determine whether a claim should be accepted or denied because~~ Where there is a reasonable basis supported by specific information for suspecting that the first party Claimant has fraudulently caused or contributed to the loss, the Claimant shall be advised of the acceptance or denial of the claim by the Insurer ~~after within~~ a reasonable time for full Investigation after receipt by the insurer of a properly executed proof of loss. ~~The Insurer is relieved from the other requirements of subsection 6A and subsection 6(B)(1); provided, however, that any information relating to fraud obtained by the Department pursuant to this subsection may be considered confidential by the Department.~~
- C. Insurers shall not fail to settle ~~claims filed by a~~ First Party Claimsant on the basis that responsibility for payment should be assumed by others except as ~~is expressly~~ may otherwise be provided by Policy provisions.
- ~~D.~~ — ~~Where liability and damages are reasonably clear, the Insurer shall not recommend that a Third Party Claimant make a claim under his or her own Policy.~~
- ~~E~~D. No Insurer shall commence or continue negotiations for settlement of a claim ~~directly with a Claimant who is not legally represented, if the claimants rights may be affected by a statute of limitations, unless or until~~ the Insurer has given the Claimant written notice of ~~the applicable~~ statute of such limitations. ~~In addition to said initial n~~Notice, ~~written notice~~

~~of said statute of limitations~~ shall be given ~~to First~~to first Pparty Cclaimants at least thirty (30) Ddays and to Tthird Pparty Cclaimants at least sixty (60) Ddays before the date on which any such statute of limitations may expire.

~~FE.~~ No Iinsurer shall ~~represent to make statements indicating that the rights of a Tthird Pparty Cclaimant that his or her rights~~ may be impaired if ~~he or she does not execute any a~~ form or release is not completed within a given period of time unless the statement is given for the purpose of notifying ; provided however, nothing in this subsection shall be deemed to prohibit the Insurer from notifying the Tthird Pparty Cclaimant of anythe provision of a applicable statute of limitations.

~~GF.~~ ~~At such time as there has been an~~The insurer shall affirmation or deny of liability within a reasonable time and ~~the amount of the claim to be paid is no longer in dispute, the Insurer~~ shall tender payment within thirty (30) Ddays ~~thereof of affirmation of liability~~. In claims where multiple ~~types of coverages under a policy~~ are involved, ~~the Insurer shall tender payment within thirty (30) Days of when payment under said type of coverage is no longer in dispute~~ payments which are not in dispute and where the payee is known should be tendered within thirty (30) days if such payment would terminate the insurer's known liability under that individual coverage.

~~HG.~~ No Iinsurer shall request or require any Iinsured to submit to a polygraph examination unless authorized under the applicable Policy insurance contract and state law.

~~IH.~~ If, after an insurer denies a claim, the claimant objects to such denial, In an Insurer's denial of a claim, in whole or in part, the Iinsurer shall notify the Claimant in writing that he or she may have the matter reviewed by the Rhode Island Department of Business Regulation, Division of Insurance, via the contact information for the Department promulgated in a Bulletin for this specific purpose as follows:

~~We will be available to you to discuss the position we have taken. Should you, however, wish to contact the Rhode Island Department of Business Regulation, you may do so at the address listed below. In certain limited circumstances the Department may have jurisdiction pursuant to R.I. Gen. Laws § 27-9.1-6 and therefore, you may be able to have the matter reviewed by the Department. The Department of Business Regulation does not have authority to settle or arbitrate claims, determine liability or order an Insurer to pay a claim.~~

~~Rhode Island Department of Business Regulation~~

Insurance Division  
233 Richmond Street,  
Providence, Rhode Island 02903.

The Rhode Island Department of Business Regulation, Insurance  
Division can be contacted by telephone at (401) 222-2223  
[www.dbr.state.ri.gov](http://www.dbr.state.ri.gov)

**Section 78. Standards for Prompt, Fair and Equitable Settlements Applicable to Automobile ~~Insurers~~ Insurance**

**A. Total Loss Vehicles**

- (1) Pursuant to R.I. Gen. Laws § 27-9.1-4(25) an insurer may not designate a vehicle a total loss unless the cost to rebuild or reconstruct the motor vehicle to pre accident condition is less than 75% of the fair market value of the motor vehicle immediately preceding the time it was damaged.
- (2) Fair market value means the retail value of the motor vehicle as set forth in a current edition of a nationally recognized compilation of retail values commonly used by the automotive industry of established values of motor vehicles.
  - a. Entities that seek to qualify as “nationally recognized compilation of retail values commonly used by the automotive industry” will make a filing with the Department requesting that the entity be deemed to qualify under R.I. Gen. Laws § 27-9.1-4(25). Initial filings should be made within ten (10) days of the effective date of this section.
  - b. The Department will hold a hearing on those entities that have made such application to obtain input from all interested persons. Following said hearing the Department will publish a bulletin identifying those entities that qualify.
  - c. Entities may file a new application at any time which will be addressed by the Department in due course.
- (3) If the total cost to rebuild or reconstruct the motor vehicle is less than 75% the vehicle may be considered a total loss with the written agreement of the owner. The owner is the person or entity listed on the title to the motor vehicle.

~~A.~~ **B. Total Losses: Replacement Vehicles and Cash Settlement -When the Policy provides for the adjustment and settlement of first party automobile motor**

~~vehicle~~ total losses on the basis of ~~actual-cash~~fair market value or a ~~R~~replacement ~~Vehicle~~with another of like kind and quality, one of the following methods shall apply:

(1) ~~Replacement Vehicle~~The ~~I~~nsurer may elect to offer a ~~R~~replacement automobile that is at least comparable in that it will be by the same manufacturer, same or newer year, similar body style, similar options and mileage as the insured vehicle and in as good or better overall condition and available for inspection at a licensed dealer within a reasonable distance of the insured's residence. The insurer shall pay all applicable taxes, license fees and other fees incident to transfer of evidence of ownership of the automobile paid, at no cost other than any deductible provided in the policy. ~~Vehicle. Said Replacement Vehicle shall be made available for the purpose of Claimant's inspection at a licensed dealer within a reasonable distance of the Claimant's residence. The Insurer's offer and Insured's acceptance or any rejection thereof must be documented in the Cclaim Ffile.~~

(2) Cash Settlement~~(i)~~ The ~~I~~nsurer may elect ~~to pay~~ a cash settlement ~~equal to~~based upon the ~~actual-cash~~fair market value of the motor vehicle less any deductible provided in the ~~P~~policy: to purchase a comparable automobile including all applicable taxes, license fees and other fees incident to transfer of evidence of ownership of a comparable automobile.

~~In determining the actual cash value of a motor vehicle to settle motor vehicle property damage liability and collision damage claims, Insurers shall use as a guide, the average retail values indicated by the National Automobile Dealers Association official Used Car Guide ("Guide") or some service substantially similar (with appropriate adjustment for such factors as vehicle condition, high and low mileage, accessory options). Nothing herein shall preclude a deviation from the Guide in cases where it can be shown that the vehicle in question was of substantially greater or lesser value in a particular geographical location than the average retail values that the Guide indicates.~~~~(ii)~~ When the cash settlement amount is affected by betterment or depreciation, the~~i~~nsurer must support the deviation by documentation in the ~~C~~claim ~~F~~file by giving particulars of the automobile condition that warrant said deviation. Any deductions or betterment from ~~actual-cash~~fair market value ~~from the Guide~~, including deduction for salvage, must be measurable, discernible, itemized and specified as to dollar amount and shall be appropriate in amount. Deduction shall not be made for reconditioning or dealer preparation. The basis for determining ~~actual-cash~~fair market value shall be fully explained to the ~~C~~claimant. All information that is the basis for such reduction shall be contained in the ~~C~~claim ~~F~~file and a copy of the valuation shall be provided to the claimant.

\_\_\_\_\_ If the Insurer in the process of adjusting a total loss makes a deduction for salvage of the Claimant's vehicle, the Insurer must furnish the Claimant with the name and address of a salvage dealer who will purchase the salvage for the amount deducted.

(~~ii~~3) Right of Recourse - If the Insurer is notified ~~by the Claimant~~ within thirty-five (35) Days of the receipt of the ~~cash settlement claim draft~~ that the ~~Claimant has located a Replacement Vehicle but that said Replacement Vehicle cannot be purchased for the amount paid to the Claimant for the cash settlement claimant cannot purchase a comparable vehicle for the market value~~, the Insurer shall reopen its Claim File and the following procedure(s) shall apply:

(i) The insurer may locate a comparable vehicle by the same manufacturer, same year, similar body style and similar options and price range for the insured for the fair market value determined by the insurer at the time of settlement. Any such vehicle must be available through licensed dealers;

(~~aii~~) The Insurer may shall either pay the Claimant the difference between the fair market value before applicable deductions and the cost of the comparable vehicle of like kind and quality which the claimant has located, or negotiate and effect the purchase of this vehicle for the claimant, cash settlement and the cost of the Replacement Vehicle (adjusted for betterment, if any) which has been located by the Claimant; or

(~~biii~~) The Insurer may locate ~~elect to offer a R~~replacement ~~Vehicle as defined in~~ accordance with the provisions set forth in Section 78(AB)1 above; or

(~~eiv~~) If the Claimant is a First Party Claimant, the Insurer ~~or Insured~~ may invoke ~~conclude~~ the loss settlement ~~procedure~~ as ~~defined and~~ provided for under the appraisal section of the Policy insurance contract in force at the time of loss. This appraisal ~~process~~ shall be binding ~~on~~ against both parties, but shall not preclude or waive any other rights either party has under the Policy insurance contract or at common law; ~~or~~

The insurer is not required to take action under this subsection if its documentation to the claimant at the time of settlement included written notification of the availability and location of a specified and comparable vehicle of the same manufacturer, same year, similar body style and similar options in as good or better condition as the total loss vehicle which could have been purchased for the fair market value before

applicable deductions. The documentation shall include the vehicle identification number.

- (4) R.I. Gen. Laws § 44-18-30(23), removed the exemption from sales tax of proceeds applicable to total loss motor vehicles received as a result of an insurance claim. Therefore, in order to fully compensate for the loss to the consumer, the insurer must include sales tax in its calculation of settlement value in any total loss claim.

BC. Partial Losses Vehicle Repairs

- (1) ~~If partial losses are shall be~~ settled on the basis of a written ~~estimate appraisal, or for claims less than \$2,500 on the basis of an appraisal or estimate.~~ ~~†The Insurer shall supply the Claimant with a copy of the estimate appraisal upon which the settlement is based. The appraisal shall be reasonable, in accordance with applicable policy provisions, and of an amount which will allow for repairs to be made in a workmanlike manner.~~ If the ~~Claimant subsequently claims, notifies the Insurer within thirty-five (35) Days of the receipt of the cash settlement for said partial loss,~~ based upon a written estimate which he or she obtains, that necessary repairs will exceed the written ~~estimate appraisal~~ prepared by or for the ~~Insurer~~, the ~~Insurer~~ shall:
- (i) pay the difference between the written ~~estimate appraisal~~ and a higher estimate obtained by the ~~Claimant insured~~, or
  - (ii) promptly provide the ~~Claimant~~ with the name of at least one Automobile Body Shop that will make the repairs for the amount of the written estimate. ~~The insurer shall assure that the repairs are performed in a workmanlike manner. Said Automobile Body Shop shall be located within a reasonable distance from the Claimant's residence.~~ The Insurer shall maintain documentation of all ~~such~~ ~~Communications~~. The ~~Claimant~~ shall not be required to use said Automobile Body Shop; however, the ~~Insurer~~ shall not be required to pay for the difference between the ~~Insurer's~~ written estimate and the ~~Claimant's~~ estimate if the ~~Claimant~~ chooses to use another Automobile Body Shop.
- (2) When settling a claim ~~under this subsection B~~, the amount of the settlement shall allow for the motor vehicle to be repaired to its condition prior to the loss within a reasonable time period.

~~For motor vehicles less than thirty (30) months beyond the date of manufacture, the Insurer shall not specify the use of an aftermarket part or used part whether OEM or otherwise, for the repair of the motor vehicle~~

~~unless the Automobile Body Shop has written consent from the Claimant pursuant to R.I. Gen. Laws § 27-10.2-2.~~

~~For all motor vehicles thirty (30) months or more beyond date of manufacture, the Insurer shall not require the use of aftermarket parts or non-OEM parts in the repair of a motor vehicle, unless the part is at least equal in kind and quality to the original part in terms of fit, quality and performance. Insurers specifying the use of aftermarket parts or non-OEM parts shall consider the cost of any modifications which may become necessary when making the repair. All such aftermarket parts and non-OEM parts shall carry sufficient permanent non-removable identification so as to identify their manufacturer. Such identification shall be accessible to the extent possible after installation.~~

(3) ~~When the amount claimed is reduced because of Any deduction for betterment or depreciation all information for such reduction shall be contained in the claim file. The deductions shall be must be reasonable, itemized and, specified as to dollar amount, and documented in the Claim File shall be appropriate for the amount of deductions.~~

(4) ~~An Insurer may not withhold payment to an Insured claimant, pending reinspection under R.I. Gen. Laws § 27-10.1-9 or receipt of work-completed certification required pursuant to R.I. Gen. Laws § 5-38-28.~~

(5) Replacement Crash Parts

(a) The purpose of this subsection is to set forth standards for the prompt, fair and equitable settlements applicable to automobile insurance with regard to the use of replacement crash parts. It is intended to regulate the use of replacement crash parts in automobile damage repairs which insurers pay for on their insured's vehicle. It also requires that all replacement crash parts, as defined in this section, be identified and be of the same quality as the original part.

(b) For motor vehicles less than thirty (30) months beyond the date of manufacture, the insurer shall not specify the use of an replacement crash part or aftermarket part or used part whether OEM or otherwise, for the repair of the motor vehicle unless the Automobile Body Shop has written consent from the claimant pursuant to R.I. Gen. Laws § 27-10.2-2.

(c) All replacement crash parts, which are subject to this section and manufactured after the effective date of this section, shall carry sufficient permanent non-removable identification so as to identify

its manufacturer. Such identification shall be accessible to the extent possible after installation.

(e) For all motor vehicles thirty (30) months or more beyond date of manufacture, no insurer shall require the use of replacement crash parts in the repair of an automobile unless the replacement crash part is at least equal in kind and quality to the original part in terms of fit, quality and performance. Insurers specifying the use of replacement crash parts, when allowable under R.I. Gen. Laws § 27-10.2-2, shall consider the cost of any modifications which may become necessary when making the repair.

#### D. Steering

(1) The purpose of R.I. Gen. Laws § 27-29-4 is to protect consumers from unfair methods of competition or unfair or deceptive acts or practices. Specifically, the legislative intent of subsection (15) is to assure consumers (first and third party claimants) the right to have a free choice in selecting an automobile body repair shop. The purpose of this section is to clarify insurance companies' obligations pursuant to R.I. Gen. Laws § 27-29-4(15).

(2) R.I. Gen. Laws § 27-29-4(15) defines one unfair method of competition and unfair or deceptive act or practice in the business of insurance as:

*[r]equiring that repairs be made to an automobile at a specified auto body repair shop or interfering with the insured's or claimant's free choice of repair facility.* The insured or claimant shall be promptly informed by the insurer of his or her free choice in the selection of an auto body repair shop. Once the insured or claimant has advised the insurer that an auto body repair shop has been selected, the insurer may not recommend that a different auto body repair shop be selected to repair the automobile. [Emphasis added]

(3) When a claim is reported to an insurer, the insurer must promptly inform the claimant (first or third party) of his or her free choice in the selection of an automobile body repair shop. The insurer may not require repairs to be made at a specific auto body shop or interfere with the insured's or claimant's free choice of repair facility. In addition, once the insured or claimant tells the insurer that he/she has selected an automobile body repair shop, the insurer may not recommend a different auto body repair shop.

(4) R.I. Gen. Laws § 27-29-4(15) does not prevent an insurer from communicating true information to a consumer. The mere transmittal of information does not constitute "steering." Providing truthful, non-

coercive information about options available to consumers is not a “recommendation” prohibited by the statute. The fact that a consumer alters his or her choice of repairer after speaking with an insurer does not itself establish a violation of the statute. However, an insurer may not disseminate false information. At no time shall an insurer make any misrepresentation to the claimant (first or third party) about any of the following: the limitations, scope, and/or quality of the work of any automobile body repair shop or of the warranty or guarantee provided by any shop for the work performed.

(5) The choice of an auto body shop is the consumers. Insurers should guide their conduct by that principle. Examples of conduct, in the totality of the circumstance, that constitute “interfering” can be found in the Departments’ administrative decision in Providence Auto Body v. Allstate Insurance Company, DBR 07-I-0114. Further, the Department does not interpret R.I. Gen. Laws § 27-29-4(15) as prohibiting the insured or claimant from receiving, or the insurance company from conveying to, the insured or claimant information concerning the insurer’s obligations and benefits under the contract (policy).

(6) The provisions of this section also apply to claims involving motor vehicle glass installation.

(7) Insurers shall not require that vehicles be removed from a repair shop for purposes of appraisal, where an appraisal may reasonably be conducted at the repair shop in question. While insurers may request appraisal at a centralized location, if the owner does not agree the appraisal should occur at the customers selected repair shop or other requested location unless there are documented circumstances of impossibility.

#### E. Miscellaneous Requirements

(1) Where liability and damages are reasonably clear, insurers shall not recommend that third party claimants make claim under their own policies solely to avoid paying claims under such insurer’s policy.

(2) Insurers shall not require a claimant to travel an unreasonable distance to inspect a replacement automobile.

(d3) The Claimant may exercise his or her right to Arbitration pursuant to R.I. Gen. Laws § 27-10.3-1.

C(4)- Subrogation An Iinsurer shall include the Ffirst Pparty Cclaimant's deductible, if any, in subrogation demands. Pursuant to R.I. Gen. Laws § 27-8-12 Uupon settlement of the subrogation claim, the Ffirst Pparty Cclaimant's-Iinsurer shall pay its Iinsured the full deductible or the amount

collected if less than the full deductible, less the ~~I~~nsured's prorated share of the subrogation expenses, if any. The subrogation expenses, as opposed to the ~~I~~nsured's deductible, are subject to prorating based on percentage of fault. The insurer may only retain funds in excess of the deductible portion of the recovery as set forth in this section.

(5) When the insurer elects to repair and designates a specific repair shop for automobile repairs, the insurer shall cause the damaged automobile to be restored to its condition prior to the loss at no additional cost to the claimant other than as stated in the policy and within a reasonable period of time.

~~D(6)- (1) Towing and Storage- Storage and Towing. Storage and towing rates set by regulation or order of an administrative agency with jurisdiction over that subject matter, shall be considered the appropriate and reasonable charges for those services. The insurer shall provide reasonable notice to a first or third party claimant prior to termination of payment for automobile storage. Such insurer shall provide reasonable time for the claimant to remove the vehicle from storage prior to the termination of payment. Unless the insurer has provided an insured with the name of a specific towing company prior to the insured's use of another towing company, the insurer shall pay any and all reasonable towing charges irrespective of the towing company used by the insured.~~

~~(2) The Department's Regulation for Storage Rates by Auto Body Shops shall apply to Insurers.~~ The ~~I~~nsurer shall provide written notice to a ~~C~~claimant, with a copy to the storage facility, prior to termination of payment for motor vehicle storage charges. Such notice shall be given in reasonable time so as to provide the ~~C~~claimant the opportunity to remove the vehicle from storage prior to the termination of payment.

(6) An insurer taking possession of a motor vehicle with a Rhode Island certificate of title that has been declared a total loss because of damage to that vehicle shall

(a) Apply for a salvage certificate of title within ten (10) days in accordance with R.I. Gen. Laws § 31-46-1 and R.I. Gen. Laws § 31-46-1.1.

(b) Prior to making application with the division of motor vehicles, evaluate the damage to the vehicle and properly classify the salvage as either "parts only" or "repairable" as defined in R. I. Gen. Laws §31-46-1.1.

(c) Maintain copies of all documents utilized to evaluate the damage for classification purposes.

(d) Produce such documentation as required by the division of motor vehicles upon applying for the salvage certificate of title.

(e) In accordance with R.I. Gen. Laws §27-8-14 all insurers shall report all vehicle thefts within thirty (30) days of the theft and all salvage declarations to the National Insurance Crime Bureau (NICB) or similar organization that maintains a central database of automobile theft and salvage.

**Section 89. Standards for Prompt, Fair and Equitable Settlements Applicable to Fire and Extended Coverage Type Policies with Replacement Cost Coverage**

**A. Replacement Cost**

When the ~~insurance~~ ~~P~~policy provides for the adjustment and settlement of ~~F~~first ~~P~~party ~~C~~claimant losses based on replacement cost, the following shall apply:

- (1) When a loss requires repair or replacement of an item or part, any consequential physical damage incurred in making such repair or replacement not otherwise excluded by the ~~P~~policy, shall be included in the loss. The Insured shall not have to pay for betterment nor any other cost except for the applicable deductible.
- (2) When a loss requires replacement of items and the replaced items do not match in quality, color or size, the ~~I~~nsurer shall replace all such items so as to conform to a reasonably uniform appearance. This applies to interior and exterior losses. The Insured shall not bear any cost over the applicable deductible, if any.

**B. Actual Cash Value**

- (1) When the ~~insurance~~ Policy provides for the adjustment and settlement of losses on an actual cash value basis on residential fire and extended coverage, the Insurer shall determine actual cash value as follows: replacement cost of property at time of loss less depreciation, if any. Upon the Insured's request, the Insurer shall provide a copy of the Claim File worksheet(s) detailing any and all deductions for depreciation.
- (2) In cases in which the Insured's interest is limited because the property has nominal or no economic value, or a value disproportionate to replacement cost less depreciation, the determination of actual cash value as set forth above is not

required. In such cases, the Insurer shall provide, upon the Insured's request, a written explanation of the basis for limiting the amount of recovery along the amount payable under the policy.

**Section 910. Department Complaint Review**

A ~~Claimant~~ who believes that there has been a violation of this Regulation may file a written complaint with the Division. ~~All such complaints must be signed by the Claimant.~~ All complaints filed with the Department shall be processed in accordance with the Division's internal complaint review process and, if the Division determines that reasonable cause exists, the complaint shall be handled in accordance with the Department's Rules of Practice and Procedure in Administrative Hearings.

All complaints filed with Department must be in writing.

The Department will only accept complaints filed by the individual ~~Claimant~~, the ~~Claimant's~~ designated immediate family member (spouse, parent, sibling or offspring), ~~Claimant's~~ attorney admitted to practice law in this state, executor and/or administrator or other court-appointed legal representative of the ~~Claimant's~~ estate. If a complaint relates to a claim which is under consideration by any court of this or any other state, the Division may defer jurisdiction over the matter to that court.

~~All disputes regarding the terms and provisions of the Policy which disputes are not covered by this Regulation and the Unfair Claims Settlement Practices Act, shall be resolved between the Insurer and the Claimant. The Department's authority is limited to jurisdictional matters pursuant to R.I. Gen. Laws § 27-9.1-6. The Department does not have the authority to settle or arbitrate claims, determine liability or order an Insurer to pay a claim. Nothing herein shall be deemed to prohibit either the Insurer or the Claimant from seeking redress in the appropriate judicial forum.~~

**Section 101. Effective Date**

This Regulation shall become effective ~~on March 29, 1999 and supersedes the Department's prior Regulation entitled Unfair Property/Casualty Claims Settlement Practices Regulation.~~ twenty (20) days after filing with the Secretary of State as indicated below.

EFFECTIVE DATE: February 14, 1994  
AMENDED: March 29, 1999  
REFILED: December 19, 2001  
AMENDED: September , 2013