



**Substitute House Bill No. 6549**

**Public Act No. 13-148**

**AN ACT ESTABLISHING A MEDIATION PROGRAM FOR CERTAIN INSURANCE POLICY CLAIMS AND CONCERNING REQUIREMENTS FOR PERSONS PERFORMING REPAIRS, REMEDIATION OR MITIGATION PURSUANT TO A LOSS.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. (NEW) (*Effective October 1, 2013*) (a) (1) The Insurance Department may establish a mediation program for any open claim for loss or damage to personal or real property that arises under an insured's (A) personal risk insurance policy, as defined in section 38a-663 of the general statutes, other than a private passenger nonfleet automobile insurance policy, (B) condominium association master policy under section 47-83 of the general statutes, or (C) unit owners' association property insurance policy under section 47-255 of the general statutes, as a result of a catastrophic event for which the Governor has declared a state of emergency. Any company licensed to write the lines of insurance set forth in subparagraphs (A) to (C), inclusive, of this subdivision shall participate in the mediation program. For purposes of this section, "claim" means any dispute between an insured and such insured's insurer arising from such catastrophic event in which the difference between the position of the parties for the actual cash value or the amount of loss is five thousand dollars or more, notwithstanding any applicable deductible, except

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that the parties may agree to mediate a dispute involving a lesser amount.

(2) This section shall not apply to any claim (A) made under a flood insurance policy issued by the National Flood Insurance Program, (B) for which coverage is in dispute, or (C) with respect to which coverage has been exhausted.

(b) The Insurance Commissioner shall designate an entity as the commissioner's designee to carry out the mediations pursuant to this section. The insurer shall pay the mediation fee to the designated entity not later than ten business days after such insurer receives an invoice for such mediation from such entity. The insurer shall not be responsible for any costs incurred by an insured including, but not limited to, costs incurred for advisors, representatives, attorneys or public adjusters.

(c) The mediation shall be conducted in accordance with procedures established by the designated entity and approved by the commissioner. The commissioner shall not designate an entity as the commissioner's designee unless:

(1) Such entity agrees (A) that the commissioner shall oversee the operational procedures of such entity with respect to the administration of the mediation program, (B) that the commissioner shall have access to all systems, databases and records related to the mediation program, and (C) to make reports to the commissioner in a form and manner prescribed by the commissioner;

(2) Such entity's procedures require that (A) the parties agree, in writing, prior to the mediation that statements made during the mediation are confidential and will not be admitted into evidence in any civil action concerning the claim, except with respect to any proceeding or investigation of insurance fraud, (B) a settlement

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agreement reached in a mediation shall be transcribed into a written agreement, on a form approved by the commissioner, that is signed by the insured and a representative of the insurer with the authority to do so, and (C) a settlement agreement prepared during a mediation shall include a provision affording the insured a right to rescind the agreement within five business days after the date such agreement is reached, provided the insured has not cashed or deposited any check or draft disbursed to the insured for the disputed matters as a result of such agreement; and

(3) Such entity's procedures provide that (A) the mediator may terminate a mediation session if the mediator determines that either the insured or the insurer's representative is not participating in the mediation in good faith, or if even after good faith efforts, a settlement cannot be reached, (B) the designated entity may schedule additional mediation sessions if it believes the sessions may result in a settlement, (C) the designated entity may require the insurer to send a different representative to a rescheduled mediation session if the first representative has not participated in the mediation in good faith, and any fee for such other representative shall be paid by the insurer, and (D) the designated entity may reschedule a mediation session if the mediator determines that the insured is not participating in good faith, but only if the insured pays the entity's fee for the mediation.

(d) An insured's right to request mediation pursuant to this section shall not affect any other right the insured may have to redress the dispute after the completion of the mediation, including any remedies specified in the insurance policy or any right provided by law, unless a settlement agreement for the dispute has been entered into and the insured did not rescind such agreement as provided under subparagraph (C) of subdivision (2) of subsection (c) of this section.

(e) The commissioner may adopt regulations, in accordance with the provisions of chapter 54 of the general statutes, to implement the

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provisions of this section. Such regulations shall include, but not be limited to, (1) the form and manner of notification by the insurer to an insured of the right to mediation, (2) the forms and procedures for an insured or an insurer to request a mediation proceeding, and (3) the requirements for an insurer's participation at the mediation hearing.

Sec. 2. Section 38a-313a of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2013*):

(a) (1) Prior to commencing any repair, remediation or mitigation pursuant to a loss occurring on or after [July 1, 2012, and covered] October 1, 2013, under a personal risk insurance policy, as defined in section 38a-663, or a commercial risk policy, as defined in section 38a-663, the person who will perform the repair, remediation or mitigation shall: [provide an]

(A) Provide an insured with a written notice that indicates the scope of the work to be completed and the estimated total price. Such notice shall not be required for [(1)] (i) any repair of an automobile that is subject to this chapter, or [(2)] (ii) any repair that is subject to chapter 400; [.] and

(B) Include, in any contract or document in connection with such repair, remediation or mitigation that authorizes an insurer to make a payment directly to the person performing such repair, remediation or mitigation, a provision that discloses to the signatory, in not less than twelve-point type immediately above the signature line, that the insured has the right to be named as a joint payee on the payment instrument.

(2) No such contract or document shall include any provision that creates a power of attorney or waives the signatory's or insured's legal rights against the person performing such repair, remediation or mitigation.

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(b) If the person performing the repair, remediation or mitigation or a contract or document in connection with such repair, remediation or mitigation fails to [provide the written notice in accordance with subsection (a) of this section to an insured] comply with the requirements set forth in subsection (a) of this section, any contract between such person and such insured for, or document in connection with, such repair, remediation or mitigation shall be void.

(c) As used in this section, "remediation" includes, but is not limited to, cleaning services.

Approved June 21, 2013