



General Assembly

February Session, 2008

**Raised Bill No. 5154**

LCO No. 1501

\*01501\_\_\_\_\_INS\*

Referred to Committee on Insurance and Real Estate

Introduced by:  
(INS)

**AN ACT ESTABLISHING A DISPUTE RESOLUTION MECHANISM FOR HOMEOWNERS FOLLOWING MAJOR CATASTROPHES.**

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

1 Section 1. Section 38a-9 of the general statutes is repealed and the  
2 following is substituted in lieu thereof (*Effective January 1, 2009*):

3 (a) Notwithstanding the provisions of section 4-8, there shall be a  
4 Division of Consumer Affairs within the Insurance Department, which  
5 division shall act on the Insurance Commissioner's behalf and at his  
6 direction in order to carry out his responsibilities under this title with  
7 respect to such matters. The division shall receive and review  
8 complaints from residents of this state concerning their insurance  
9 problems, including claims disputes, and serve as a mediator in such  
10 disputes in order to assist the commissioner in determining whether  
11 statutory requirements and contractual obligations within the  
12 commissioner's jurisdiction have been fulfilled. There shall be a  
13 director of said division, who shall be provided with sufficient staff.  
14 The division shall serve to coordinate all appropriate facilities in the  
15 department in addressing such complaints, and conduct any outreach  
16 programs deemed necessary to properly inform and educate the public

17 on insurance matters. The director shall submit quarterly reports to the  
18 commissioner, which shall state the number of complaints received by  
19 the division in such calendar quarter, the Connecticut premium  
20 volume of the appropriate line of each insurance company against  
21 which a complaint has been filed, the types of complaints received,  
22 and the number of such complaints which have been resolved. Such  
23 reports shall be published every six months and copies shall be made  
24 available to any interested resident of this state upon request. The  
25 commissioner shall report in accordance with section 11-4a to the joint  
26 standing committee of the General Assembly having cognizance of  
27 matters relating to insurance on or before January 15, 1988, and  
28 annually thereafter, [concerning] the findings of such reports and  
29 suggestions for legislative initiatives to address recurring problems.

30 (b) (1) The Division of Consumer Affairs shall provide an  
31 independent arbitration procedure for the settlement of disputes  
32 between claimants and insurance companies concerning automobile  
33 physical damage and automobile property damage liability claims in  
34 which liability and coverage are not in dispute. Such procedure shall  
35 apply only to disputes involving private passenger motor vehicles as  
36 defined in subsection (e) of section 38a-363. Any company licensed to  
37 write private passenger automobile insurance, including collision,  
38 comprehensive and theft, in this state shall participate in the  
39 arbitration procedure. The commissioner shall appoint an  
40 administrator for such procedure. Only those disputes in which  
41 attempts at mediation by the Division of Consumer Affairs have failed  
42 shall be accepted as arbitrable. The referral of the complaint to  
43 arbitration shall be made by the Insurance Department examiner who  
44 investigated the complaint. Each party to the dispute shall pay a filing  
45 fee of twenty dollars. The insurance company shall pay the consumer  
46 the undisputed amount of the claim upon written notification from the  
47 department that the complaint has been referred to arbitration. Such  
48 payment shall not affect any right of the consumer to pursue the  
49 disputed amount of the claim.

50 (2) The commissioner shall prepare a list of at least ten persons, who  
51 have not been employed by the department or an insurance company  
52 during the preceding twelve months, to serve as arbitrators in the  
53 settlement of such disputes. The arbitrators shall be members of any  
54 dispute resolution organization approved by the commissioner. One  
55 arbitrator shall be appointed to hear and decide each complaint.  
56 Appointment shall be based solely on the order of the list. If an  
57 arbitrator is unable to serve on a given day, or if either party objects to  
58 the arbitrator, then the next arbitrator on the list will be selected. The  
59 department shall schedule arbitration hearings as often, and in such  
60 locations, as it deems necessary. Parties to the dispute shall be  
61 provided written notice of the hearing, at least ten days prior to the  
62 hearing date. The commissioner may issue subpoenas on behalf of the  
63 arbitrator to compel the attendance of witnesses and the production of  
64 documents, papers and records relevant to the dispute. Decisions shall  
65 be made on the basis of the evidence presented at the arbitration  
66 hearing. Where the arbitrator believes that technical expertise is  
67 necessary to decide a case, he may consult with an independent expert  
68 recommended by the commissioner. The arbitrator and any  
69 independent technical expert shall be paid by the department on a per  
70 dispute basis as established by the commissioner. The arbitrator, as  
71 expeditiously as possible, but not later than fifteen days after the  
72 arbitration hearing, shall render a written decision based on the  
73 information gathered and disclose the findings and the reasons to the  
74 parties involved. The arbitrator shall award filing fees to the prevailing  
75 party. If the decision favors the consumer the decision shall provide  
76 specific and appropriate remedies including interest at the rate of ten  
77 per cent on the arbitration award concerning the disputed amount of  
78 the claim, retroactive to the date of payment for the undisputed  
79 amount of the claim. The decision may include costs for loss of use and  
80 storage of the motor vehicle and shall specify a date for performance  
81 and completion of all awarded remedies. Notwithstanding any  
82 provision of the general statutes or any regulation to the contrary, the  
83 Insurance Department shall not amend, reverse, rescind, or revoke any

84 decision or action of any arbitrator. The department shall contact the  
85 consumer within ten working days after the date for performance, to  
86 determine whether performance has occurred. Either party may make  
87 application to the superior court for the judicial district in which one of  
88 the parties resides or, when the court is not in session, any judge  
89 thereof for an order confirming, vacating, modifying or correcting any  
90 award, in accordance with the provisions of sections 52-417, 52-418, 52-  
91 419 and 52-420. If it is determined by the court that either party's  
92 position after review has been improved by at least ten per cent over  
93 that party's position after arbitration, the court, in its discretion, may  
94 grant to that party its costs and reasonable attorney's fees. No  
95 evidence, testimony, findings, or decision from the department  
96 arbitration procedure shall be admissible in any civil proceeding,  
97 except judicial review of the arbitrator's decision as contemplated by  
98 this subsection.

99 (3) The department shall maintain records of each dispute,  
100 including names of parties to the arbitration, the decision of the  
101 arbitrator, compliance, the appeal, if any, and the decision of the court.  
102 The department shall annually compile such statistics and send a copy  
103 to the committee of the General Assembly having cognizance of  
104 matters relating to insurance. The report shall be considered a public  
105 document.

106 (c) There is established within the Division of Consumer Affairs a  
107 program for the nonadversarial mediation of disputes between an  
108 insured and an insurer for the settlement of a claim arising under the  
109 insured's homeowner's insurance policy that involves loss due to a  
110 catastrophic event for which the Governor has declared a state of  
111 emergency. For purposes of this subsection, "claim" means any dispute  
112 arising from such circumstances or for which the insurer has denied  
113 payment, in which the difference between the position of the parties is  
114 five hundred dollars or more, notwithstanding any applicable  
115 deductible, except that the parties may agree to mediate a dispute  
116 involving a lesser amount. A claim does not include a dispute with

117 respect to which the insurer has reported allegations of fraud, based on  
118 an investigation by the insurer's special investigative unit to the  
119 Insurance Department.

120 (1) The insurer shall bear all costs of conducting mediation,  
121 including, but not limited to, an administrative fee for the Insurance  
122 Department's or its designee's administration of this program and the  
123 mediator's fee. A nonrefundable payment for each mediation  
124 proceeding under this subsection shall be made to the Insurance  
125 Department, in an amount to be set by the Insurance Commissioner,  
126 pursuant to subparagraph (C) of subdivision (2) of this subsection.

127 (2) The Insurance Commissioner shall adopt regulations, in  
128 accordance with the provisions of chapter 54, to carry out the purposes  
129 of this subsection. Such regulations shall include, but not be limited to,  
130 (A) the means and content of notification by the insurer to the insured  
131 of the right to mediation, (B) the forms and procedures to request  
132 mediation by the insured or the insurer, (C) the payment of mediation  
133 costs, which shall consist of a nonrefundable fee not to exceed seven  
134 hundred fifty dollars, (D) the requirements for insurers' participation  
135 at the mediation conference, (E) the scheduling of the mediation  
136 conference, (F) the conduct of the mediation conference, and (G) post-  
137 mediation reporting requirements, including the effect of any  
138 settlement agreement in the release of claims.

139 (3) If an insured chooses not to participate in the mediation program  
140 or if the parties are unsuccessful at resolving the claim, the insured  
141 may proceed under the appraisal process set forth in the insured's  
142 insurance policy, by litigation, or by any other dispute resolution  
143 procedure available under Connecticut law. If, as a result of mediation,  
144 it is determined that the only coverage applicable is provided under  
145 the National Flood Insurance Program, the administrative fee imposed  
146 by this section, as amended by this act, and paid by the insurer shall be  
147 refunded to the insurer or credited to the insurer's account with the  
148 Insurance Department or the Insurance Department's administrative

149 designee of this program.

150 (4) Notwithstanding subsections (a) to (e), inclusive, of this section,  
151 the Insurance Commissioner may designate an entity or person as the  
152 administrator to carry out the responsibilities of this subsection.

153 ~~[(c)]~~ (d) Notwithstanding the provisions of section 4-8, there shall be  
154 a Division of Rate Review within the Insurance Department, which  
155 division shall act on the commissioner's behalf and at the  
156 commissioner's direction in order to carry out the commissioner's  
157 responsibilities under this title with respect to such matters. Subject to  
158 the provisions of sections 38a-663 to 38a-696, inclusive, the division  
159 shall assist the commissioner in reviewing rates and supplementary  
160 rate information filed with the department for compliance with  
161 statutory requirements and standards. The division's staff shall include  
162 rating examiners with sufficient actuarial expertise. Upon the request  
163 of the commissioner, the division shall review rates and  
164 supplementary rate information, and any suspected violation of the  
165 statutory requirements and standards of sections 38a-663 to 38a-696,  
166 inclusive, found pursuant to such review shall be referred to the  
167 commissioner for appropriate action. The division may assist the  
168 commissioner in formalizing the commissioner's findings regarding  
169 such actions. The commissioner shall report in accordance with section  
170 11-4a to the joint standing committee of the General Assembly having  
171 cognizance of matters relating to insurance on or before January 15,  
172 1988, and annually thereafter, [concerning] (1) the number and type of  
173 reviews conducted by the division in the prior calendar year, and (2)  
174 the percentage of increase or decrease in rates reviewed by the division  
175 during the preceding calendar year, by line and subline of insurance.

176 ~~[(d)]~~ (e) The directors and staff of both the Division of Consumer  
177 Affairs and the Division of Rate Review shall be appointed by the  
178 commissioner under the provisions of chapter 67.

This act shall take effect as follows and shall amend the following sections:

Section 1	<i>January 1, 2009</i>	38a-9
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***Statement of Purpose:***

To provide a dispute resolution mechanism for homeowners' insurance policies in the event of major catastrophes.

*[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]*