



House of Representatives

General Assembly

File No. 304

January Session, 2013

Substitute House Bill No. 6549

House of Representatives, April 2, 2013

The Committee on Insurance and Real Estate reported through REP. MEGNA of the 97th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT ESTABLISHING A MEDIATION PROGRAM FOR CERTAIN INSURANCE POLICY CLAIMS ARISING FROM A CATASTROPHIC EVENT.

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

1 Section 1. (NEW) (*Effective October 1, 2013*) (a) (1) The Insurance
2 Department shall establish a mediation program for any claim for loss
3 or damage to personal or real property that arises under a claimant's
4 (A) personal risk insurance policy, as defined in section 38a-663 of the
5 general statutes, other than a private passenger nonfleet automobile
6 insurance policy, (B) condominium association master policy under
7 section 47-83 of the general statutes, or (C) unit owners' association
8 property insurance policy under section 47-255 of the general statutes,
9 as a result of a catastrophic event for which the Governor has declared
10 a state of emergency. Any company licensed to write the lines of
11 insurance set forth in subparagraphs (A) to (C), inclusive, of this
12 subdivision shall participate in the mediation program. For purposes
13 of this section, "claim" means any dispute between a claimant and such
14 claimant's insurer arising from such catastrophic event in which the

15 difference between the position of the parties is five thousand dollars
16 or more, notwithstanding any applicable deductible, except that the
17 parties may agree to mediate a dispute involving a lesser amount. A
18 claim does not include a dispute with respect to which the insurer has
19 reported allegations of fraud, based on an investigation by the
20 insurer's special investigative unit, to the Insurance Department.

21 (2) This section shall not apply to any claim made under a flood
22 insurance policy issued by the National Flood Insurance Program or to
23 any claim for which coverage is in dispute.

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

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

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

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

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

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

69 (d) A claimant's right to request mediation pursuant to this section
70 shall not affect any other right the claimant may have to redress the
71 dispute, including any remedies specified in the insurance policy or
72 any right provided by law.

73 (e) The commissioner shall adopt regulations, in accordance with
74 the provisions of chapter 54 of the general statutes, to implement the
75 provisions of this section. Such regulations shall include, but not be
76 limited to, (1) the form and manner of notification by the insurer to an
77 insured of the right to mediation, (2) the forms and procedures for a
78 claimant or an insurer to request a mediation proceeding, and (3) the
79 requirements for an insurer's participation at the mediation hearing.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2013</i>	New section

INS *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note**State Impact:** None**Municipal Impact:** None**Explanation**

This bill requires the Insurance Department to establish an insurance mediation program for claims from a catastrophic event. The bill specifies that the department designate an entity (presumably a private, third party) to carry out the mediations and that the insurer must pay the mediation fee. There is no state or municipal fiscal impact.

The Out Years**State Impact:** None**Municipal Impact:** None

OLR Bill Analysis**sHB 6549*****AN ACT ESTABLISHING A MEDIATION PROGRAM FOR CERTAIN INSURANCE POLICY CLAIMS ARISING FROM A CATASTROPHIC EVENT.*****SUMMARY:**

This bill requires the Insurance Department's Division of Consumer Affairs to establish a program to mediate disputes between claimants and insurance companies to settle certain claims that involve losses from catastrophic events for which the governor has declared a state of emergency. The program must address any dispute arising from a catastrophic event where the difference between the parties' positions is \$5,000 or more, not counting any applicable deductible. The parties may agree to mediate a dispute involving a smaller amount.

The bill requires the commissioner to designate an entity as his designee to implement the program and specifies the conditions an entity must meet to be designated. The mediation must be conducted in accordance with procedures the entity establishes that are approved by the insurance commissioner.

Insurers licensed to provide insurance in the affected areas must participate in the program. The insurer must pay mediation fee to the designated entity within five business days after it receives an invoice for the mediation from the entity. The insurer is not responsible for any cost incurred by an insured for advisors or representatives, such as attorneys or public adjusters.

The bill requires the commissioner to adopt implementing regulations and specifies what they must contain.

A claimant's right to request mediation does not affect any other

right he or she may have to redress the dispute, including any remedies specified in the insurance policy or any right provided by law.

EFFECTIVE DATE: October 1, 2013

AFFECTED POLICIES

The bill applies to claims under a:

1. personal risk insurance policy, other than a private passenger nonfleet automobile insurance,
2. condominium association master policy, or
3. condominium unit owners' association property insurance policy.

The mediation program does not apply to:

1. disputes where the insurer has reported allegations of fraud, based on an investigation by its special investigative unit, to the department or
2. claims made under a flood policy issued by the National Flood Insurance Program.

ADMINISTRATIVE ENTITY

Under the bill, the commissioner must not designate an entity to administer the program unless it agrees to:

1. let the commissioner oversee its operational procedures regarding the administration of the program,
2. give the commissioner access to all of the systems, databases and records related to the mediation program, and
3. report to the commissioner in a form and as he prescribes;

In order to be designated, the entity's procedures must require that:

1. the parties agree before the mediation, in writing, that statements made in the mediation are confidential and will not be admitted into evidence in any civil action on the claim, except with respect to proceedings or investigations of insurance fraud;
2. a settlement reached in a mediation must be transcribed into a written agreement, on a form approved by the commissioner, that is signed by the claimant and an authorized representative of the insurer;
3. a settlement prepared during a mediation must allow the claimant to rescind it within three business days after it is reached, so long as he or she has not cashed or deposited any check or draft disbursed to him or her for the disputed matters as a result of the settlement; and
4. the mediator may terminate a mediation session upon determining that the claimant or the insurer's representative is not participating in good faith. If even after good faith efforts, a settlement cannot be reached, the entity may (a) schedule additional sessions if it believes they will result in a settlement; (b) require the insurer to send a different representative to a rescheduled mediation session if the first one did not participate in good faith, and pay any fee for the other representative; and (c) reschedule a mediation session if the mediator determines that the claimant is not participating in good faith, but only if the claimant pays the entity's fee for the mediation.

REGULATIONS

The implementing regulations must at least include:

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 insurer to request a mediation proceeding, and

3. the requirements for an insurer's participation at the mediation hearing.

COMMITTEE ACTION

Insurance and Real Estate Committee

Joint Favorable Substitute

Yea 18 Nay 0 (03/14/2013)