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**By: Delegate Dembrow**

Introduced and read first time: January 31, 1996

Assigned to: Economic Matters

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A BILL ENTITLED

1 AN ACT concerning

2 **Motor Vehicle Liability Insurers - Issues of Dispute - Mediation**

3 FOR the purpose of authorizing a person covered under a motor vehicle liability  
4 insurance policy to request mediation of any issue related to a claim for  
5 reimbursement of personal injury or property damages arising out of the ownership,  
6 operation, use, or maintenance of a motor vehicle under certain circumstances;  
7 specifying the form and manner of a request for mediation; specifying the conduct  
8 and procedures to be followed for a mediation; requiring the Insurance  
9 Commissioner to select a mediator in a certain manner; specifying the qualifications  
10 for an individual to be qualified to be selected as a mediator; authorizing the  
11 Commissioner to adopt certain regulations related to the rules of procedure for a  
12 claims mediation; providing certain immunity to mediators under certain  
13 circumstances; providing for the future codification of this Act; and generally  
14 relating to authorizing certain persons to request mediation of certain issues related  
15 to a claim for reimbursement of personal injury or property damages arising out of  
16 the ownership, operation, use, or maintenance of a motor vehicle under certain  
17 circumstances.

18 BY adding to

19 Article 48A - Insurance Code  
20 Section 547B  
21 Annotated Code of Maryland  
22 (1994 Replacement Volume and 1995 Supplement)

23 BY adding to

24 Article - Courts and Judicial Proceedings  
25 %Section 5-399.7  
26 Annotated Code of Maryland  
27 (1995 Replacement Volume and 1995 Supplement)

28 BY adding to

29 Article - Insurance  
30 Section 19-515  
31 Annotated Code of Maryland  
32 (1995 Volume)

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1 (As enacted by Chapter \_\_\_\_\_ (H.B. 11) of the Acts of the General Assembly of  
2 1996)

3 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
4 MARYLAND, That the Laws of Maryland read as follows:

5 **Article 48A - Insurance Code**

6 547B.

7 (A) FOR ANY CLAIM FILED WITH AN INSURER FOR REIMBURSEMENT OF  
8 PERSONAL INJURY OR PROPERTY DAMAGES ARISING OUT OF THE OWNERSHIP,  
9 OPERATION, USE, OR MAINTENANCE OF A MOTOR VEHICLE BY AN INSURED, THE  
10 INSURED MAY REQUEST MEDIATION OF THE CLAIM TO ADDRESS ANY ISSUE IN  
11 DISPUTE BETWEEN THE INSURER AND THE INSURED PRIOR TO THE INSTITUTION OF  
12 LITIGATION.

13 (B) (1) THE INSURED SHALL FILE THE REQUEST FOR MEDIATION WITH THE  
14 COMMISSIONER ON A FORM APPROVED BY THE COMMISSIONER.

15 (2) THE REQUEST FOR MEDIATION SHALL STATE:

16 (I) THE REASON FOR THE REQUEST FOR MEDIATION; AND

17 (II) EACH ISSUE IN DISPUTE THAT IS TO BE MEDIATED.

18 (3) A REQUEST FOR MEDIATION SHALL SUSPEND THE APPLICABLE TIME  
19 REQUIREMENTS ESTABLISHED UNDER MARYLAND LAW AND RULES OF  
20 PROCEDURE FOR FILING SUIT FOR A PERIOD OF 60 DAYS FOLLOWING THE  
21 CONCLUSION OF THE MEDIATION PROCESS OR THE TIME PROVIDED UNDER § 5-101  
22 OF THE COURTS AND JUDICIAL PROCEEDINGS ARTICLE, WHICHEVER IS LATER.

23 (4) A MOTOR VEHICLE INSURANCE POLICY SHALL SPECIFY IN DETAIL  
24 THE TERMS AND CONDITIONS FOR MEDIATION OF A CLAIM.

25 (C) (1) THE MEDIATION SHALL BE CONDUCTED AS AN INFORMAL PROCESS  
26 IN WHICH FORMAL RULES OF EVIDENCE AND PROCEDURE NEED NOT BE  
27 OBSERVED.

28 (2) THE PARTIES PARTICIPATING IN THE MEDIATION SHALL HAVE  
29 JOINT AUTHORITY TO MAKE A BINDING DECISION.

30 (3) ALL PARTIES MUST PARTICIPATE IN MEDIATION IN GOOD FAITH.

31 (4) UNLESS AGREED OTHERWISE, THE COSTS OF MEDIATION SHALL BE  
32 PAID EQUALLY BY ALL PARTIES TO THE MEDIATION.

33 (5) ONLY ONE MEDIATION MAY BE REQUESTED FOR EACH CLAIM,  
34 UNLESS ALL PARTIES TO THE MEDIATION AGREE TO FURTHER MEDIATION.

35 (D) (1) UPON RECEIPT OF A REQUEST FOR MEDIATION, THE  
36 COMMISSIONER SHALL REFER THE REQUEST TO A MEDIATOR.

37 (2) THE COMMISSIONER SHALL SELECT MEDIATORS FROM THE LIST OF  
38 QUALIFIED INDIVIDUALS PROVIDED UNDER SUBSECTION (E) OF THIS SECTION.

1 (3) EACH PARTY TO THE MEDIATION MAY ONCE REJECT THE  
2 MEDIATOR SELECTED, EITHER ORIGINALLY OR AFTER ANOTHER PARTY TO THE  
3 MEDIATION HAS EXERCISED ITS OPTION TO REJECT THE MEDIATOR.

4 (4) THE MEDIATOR SHALL NOTIFY THE REQUESTOR AND ALL  
5 INTERESTED PARTIES, AS IDENTIFIED BY THE REQUESTOR, AND ANY OTHER PARTY  
6 THE MEDIATOR BELIEVES MAY HAVE AN INTEREST IN THE MEDIATION, OF THE  
7 DATE, TIME, AND PLACE OF THE MEDIATION CONFERENCE.

8 (5) THE MEDIATION CONFERENCE SHALL BE HELD WITHIN 45 DAYS  
9 AFTER THE REQUEST FOR MEDIATION IS FILED WITH THE COMMISSIONER.

10 (E) (1) THE COMMISSIONER SHALL PREPARE A LIST OF QUALIFIED  
11 INDIVIDUALS WILLING TO SERVE AS MEDIATORS.

12 (2) TO QUALIFY FOR SELECTION AS A MEDIATOR, AN INDIVIDUAL  
13 SHALL:

14 (I) POSSESS A MASTERS OR DOCTORATE DEGREE IN  
15 PSYCHOLOGY, COUNSELING, BUSINESS, ACCOUNTING, OR ECONOMICS;

16 (II) BE ADMITTED INTO PRACTICE OF LAW IN THE STATE;

17 (III) BE LICENSED AS A CERTIFIED PUBLIC ACCOUNTANT;

18 (IV) DEMONSTRATE THAT THE APPLICANT FOR APPOINTMENT HAS  
19 BEEN ACTIVELY ENGAGED AS A QUALIFIED MEDIATOR FOR AT LEAST 3 YEARS; OR

20 (V) HAVE SUCCESSFULLY COMPLETED A TRAINING PROGRAM  
21 APPROVED BY THE COMMISSIONER.

22 (3) A TRAINING PROGRAM THAT MAY BE APPROVED BY THE  
23 COMMISSIONER SHALL INCLUDE THE FOLLOWING:

24 (I) MEDIATION THEORY;

25 (II) MEDIATION PROCESS AND TECHNIQUES;

26 (III) STANDARDS OF CONDUCT FOR MEDIATORS;

27 (IV) CONFLICT MANAGEMENT AND INTERVENTION SKILLS; AND

28 (V) INSURANCE NOMENCLATURE.

29 (F) THE COMMISSIONER MAY ADOPT BY REGULATION RULES OF  
30 PROCEDURE FOR CLAIMS MEDIATION THAT WILL RESULT IN A SYSTEM OF CLAIMS  
31 MEDIATION THAT:

32 (1) IS FAIR;

33 (2) ACCOMMODATES THE EXPRESSION AND CONSIDERATION OF THE  
34 VIEWS OF ALL OF THE PARTIES;

35 (3) PROMOTES SETTLEMENT;

36 (4) AVOIDS DELAY;

4

1 (5) USES A FRAMEWORK FOR MODERN MEDIATING TECHNIQUE; AND

2 (6) CONTROLS THE COSTS AND EXPENSES OF MEDIATION.

3 (G) THE COMMISSIONER MAY SET BY REGULATION THE FEES THAT MAY BE  
4 CHARGED BY A MEDIATOR FOR CONDUCTING A MEDIATION UNDER THIS SECTION.

5 (H) (1) DISCLOSURES AND INFORMATION DIVULGED IN THE MEDIATION  
6 PROCESS ARE NOT ADMISSIBLE IN ANY SUBSEQUENT ACTION OR PROCEEDING  
7 RELATING TO THE CLAIM OR THE CAUSE OF ACTION GIVING RISE TO THE CLAIM.

8 (2) AN INSURED MAY NOT REQUEST MEDIATION OF AN ISSUE RELATED  
9 TO A CLAIM FOR WHICH A SUIT HAS BEEN FILED THAT RELATES TO THE SAME  
10 FACTS ALREADY MEDIATED OR THAT WOULD BE A SUBJECT OF MEDIATION.

11 (I) A MEDIATOR SHALL HAVE IMMUNITY FROM SUIT AS DESCRIBED IN §  
12 5-399.7 OF THE COURTS AND JUDICIAL PROCEEDINGS ARTICLE.

13 **Article - Courts and Judicial Proceedings**

14 5-399.7.

15 IN THE ABSENCE OF AN AFFIRMATIVE SHOWING OF MALICE OR BAD FAITH, A  
16 MEDIATOR UNDER ARTICLE 48A, § 547B OF THE CODE FROM THE TIME OF  
17 ACCEPTANCE OF SELECTION HAS IMMUNITY FROM SUIT FOR ANY ACT OR DECISION  
18 MADE DURING THE CONDUCT OF THE MEDIATION AND WITHIN THE SCOPE OF THE  
19 MEDIATOR'S AUTHORITY UNDER ARTICLE 48A, § 547B OF THE CODE.

20 SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland  
21 read as follows:

22 **Article - Insurance**

23 19-515.

24 (A) FOR ANY CLAIM FILED WITH AN INSURER FOR REIMBURSEMENT OF  
25 PERSONAL INJURY OR PROPERTY DAMAGES ARISING OUT OF THE OWNERSHIP,  
26 OPERATION, USE, OR MAINTENANCE OF A MOTOR VEHICLE BY AN INSURED, THE  
27 INSURED MAY REQUEST MEDIATION OF THE CLAIM TO ADDRESS ANY ISSUE IN  
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37 SUIT FOR A PERIOD OF 60 DAYS FOLLOWING THE CONCLUSION OF THE MEDIATION

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2 PROCEEDINGS ARTICLE, WHICHEVER IS LATER.

3 (4) A MOTOR VEHICLE INSURANCE POLICY SHALL SPECIFY IN DETAIL  
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5 (C) (1) THE MEDIATION SHALL BE CONDUCTED AS AN INFORMAL PROCESS  
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37 BEEN ACTIVELY ENGAGED AS A QUALIFIED MEDIATOR FOR AT LEAST 3 YEARS; OR

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1 (V) HAVE SUCCESSFULLY COMPLETED A TRAINING PROGRAM  
2 APPROVED BY THE COMMISSIONER.

3 (3) A TRAINING PROGRAM THAT MAY BE APPROVED BY THE  
4 COMMISSIONER SHALL INCLUDE THE FOLLOWING:

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- 8 (IV) CONFLICT MANAGEMENT AND INTERVENTION SKILLS; AND
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27 FACTS ALREADY MEDIATED OR THAT WOULD BE A SUBJECT OF MEDIATION.

28 (I) A MEDIATOR SHALL HAVE IMMUNITY FROM SUIT AS DESCRIBED IN §  
29 5-399.7 OF THE COURTS AND JUDICIAL PROCEEDINGS ARTICLE.

30 SECTION 3. AND BE IT FURTHER ENACTED, That Section 1 of this Act shall  
31 take effect October 1, 1996.

32 SECTION 4. AND BE IT FURTHER ENACTED, That Section 2 of this Act shall  
33 take effect October 1, 1997.