



**REPORT ON ASSIGNMENT OF
PREMIUM FINANCE AGREEMENTS**

November 14, 2014

MSAR No. 9576

Report on Assignment Of Premium Finance Agreements

Introduction

The 2013 General Assembly enacted SB 930, Property and Casualty Insurance – Premium Payments – Acceptance of Premiums on Installment Payment Basis and Premium Finance Agreements (2013 Laws of Maryland, Chapter 334, hereinafter, the “Act”). Section 4 of the Act requires the Maryland Insurance Administration (“MIA”) to:

- (1) keep track of complaints received from consumers who have had all rights and obligations under premium finance agreements for commercial automobile, fire, or liability insurance assigned under § 23–301.2(b) of the Insurance Article, as enacted by Section 2 of this Act; and
- (2) on or before December 31, 2014, report any findings or recommendations, in accordance with § 2-1246 of the State Government Article, to the Senate Finance Committee and the House Economic Matters Committee.

Background

Prior to passage of the Act, it was customary for Maryland registered premium finance companies to assign agreements. Through the annual premium finance company registration process, the MIA had become aware of premium finance companies that assigned or pledged agreements. Companies would pledge or assign agreements as collateral for loans or lines of credit from banks and other entities, including individuals, trusts and out-of-state premium finance companies not subject to the MIA’s authority. Additionally, some commercial premium finance companies assigned agreements to banks and other investment firms which then bundled and securitized them. Generally, the premium finance agreements contained broad assignment language, such as: “all rights under this agreement inure to the benefit of successors and assigns.” As authority for the assignment of agreements, premium finance companies relied in part upon §23-208(c) of the Insurance Article and upon the lack of an overt statutory prohibition of assignments in the Insurance Article.

The MIA also investigated complaints filed by Maryland consumers who claimed they were harmed by assignments of premium finance agreements. Before the July 1, 2013, effective date of the Act, premium finance companies assigned contracts without regulatory guidelines or any statutory requirement to provide notice to consumers. In some instances, consumers were unaware the agreement had been assigned. Gathering information from assignees not subject to the MIA’s regulatory authority, or the regulatory authority of other governmental agencies, presented another challenge.

These practices increased the potential for confusion. Consumers who were unaware of the assignments would receive notices from the assignee that the insurance policies were being cancelled for non-payment. The consumers, lacking familiarity with the entity threatening

cancellation, often times would ignore the notice reasoning that payments already had been made to the originating premium finance company. In such instances, the originating premium finance company received payment for an assigned premium finance agreement and failed to remit the payment to the assignor. This resulted in canceled automobile insurance policies, motor vehicle penalties for driving uninsured and in worst case scenarios, denied accident claims. While §23-208(c) of the Insurance Article requires the originating premium finance company to be held accountable for any violations of statute, the time necessary to investigate, render a determination and order appropriate restitution can be considerable. In the interim, the consumer is subject to motor vehicle fines, registration suspensions and civil suit if an at fault accident has occurred after coverage lapsed – even when the premiums have been paid.

The Act

Section 2 of the Act establishes the requirements for assignment of premium finance agreements with respect to both commercial and personal lines of insurance. Section 23-301.2(b) of the Insurance Article authorizes a premium finance company, with respect to commercial automobile, fire, or liability insurance, to “assign all rights and obligations under a premium finance agreement to another person if the premium finance agreement expressly confers the right to assign all rights and obligations under the premium finance agreement.” The premium finance company also “may pledge a premium finance agreement as collateral for a loan.” If the premium finance company assigns rights and obligations under a premium finance agreement, the assigning premium finance company must retain the obligation to service the premium finance agreement or assign the obligation to another State-registered premium finance company. In the event the premium finance company assigns the obligation to service a premium finance agreement to another premium finance company, it must provide the insured with notice of the assignment and the name, address, and telephone number of the premium finance company to which the obligation has been assigned.

The Act contains similar provisions permitting premium finance companies to assign rights or obligations under, or pledge as collateral, with respect to private passenger motor vehicle insurance and personal insurance, codified at § 23-301.2(a) of the Insurance Article. The provisions of both § 23-201.2(a) of the Insurance Article (relating to private passenger motor vehicle and personal insurance) and § 23-301.2(b) of the Insurance Article (relating to commercial automobile, fire, or liability insurance) are abrogated and of no further force and effect after June 30, 2015.

Complaints Analysis

In accordance with Section 4, number 1 of the Act, the MIA is required to keep track of complaints received from consumers who have had all rights and obligations under premium finance agreements for commercial automobile, fire, or liability insurance assigned under § 23-301.2(b) of the Insurance Article. From July 1, 2013 to the date of this report, the MIA received no complaints regarding the assignment of rights and obligations under premium finance agreements for commercial automobile, fire, or liability insurance.

Although the MIA was not required to track complaints related to the assignment of rights and obligations under premium finance agreements for private passenger automobile and personal insurance under § 23-301.2(a) of the Insurance Article, based on the MIA's prior experience involving such complaints, we tracked those complaints as well. In December, 2013, two Maryland premium finance companies under common ownership filed for bankruptcy. Before the bankruptcy filing, agreements had been assigned to other Maryland registered premium finance companies. Of the 53 complaints received regarding the bankruptcy of the two companies, 11 or 20.7%, involved the assignment of finance agreements with respect to private passenger motor vehicle insurance.

A review of the 11 complaints indicates that even after their agreements had been assigned to other Maryland registered premium finance companies and notice provided, consumers continued to make payments to the originating premium finance companies. When the originating premium finance companies failed to forward those payments, the assignees worked with consumers and provided additional time for them to make duplicate payments to maintain automobile insurance coverage in force. In some instances, when duplicate payments ultimately could not be made, the assignees provided appropriate statutory notice to consumers prior to canceling the policies for non-payment. Throughout the MIA's investigation of these complaints, we have been in communication with the automobile insurers, the bankruptcy trustee, the premium finance companies, the Motor Vehicle Administration and the insurance company that issued the surety bonds for the originating premium finance companies in an effort to have the consumers' policies reinstated, premiums refunded, payments credited to accounts, and/or motor vehicle fines reduced or removed.

Findings and Recommendations

Section 6 of the Act states that Section 2 shall remain effective for a period of 2 years and, at the end of June 30, 2015, with no further action required by the General Assembly, Section 2 of the Act shall be abrogated and of no further force and effect. To reiterate, Section 2 of the Act establishes the requirements for assignment of premium finance agreements with respect to both commercial and personal lines of insurance.

Based on the absence of complaints related to the assignment of premium finance agreements for commercial automobile, fire, or liability insurance, the MIA has no concerns with the scheduled abrogation of Section 23-301.2(b) of the Insurance Article.

While not directed to report findings and recommendations on § 23-201.2(a) of the Insurance Article relating to private passenger motor vehicle and personal insurance, respectfully, the MIA would like to take this opportunity to do so. While the MIA has continued to receive a small percentage of complaints regarding assignments of premium finance agreements for this segment of the business, conducting investigations and obtaining all necessary documents and information from registered premium finance companies subject to the MIA's regulatory authority is less onerous than attempting to obtain this material from individuals and entities over whom we lack jurisdiction. Further, absent a statutory prohibition against assignments, we anticipate a return to the industry practices as they existed prior to this Act, where it was customary for premium finance agreements to be assigned without notice to

consumers. For personal insurance consumers, the failure to provide notice of the assignment can result and has resulted in demonstrable financial harm. Considering past experience and the most recent complaint activity summarized above, the MIA recommends that those provisions of Section 2 of the Act relating to private passenger motor vehicle and personal insurance (and the notice provisions contained in § 23-201.2(c)) not be abrogated, and remain in full force and effect.