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BULLETIN 06-24

To: All Property & Casualty Insurers

RE: HB 760 – Private Passenger Motor Vehicle Liability Insurance –
Cancellations, Failures to Renew, Reductions in Coverage, and Premium
Increases

Date: October 25, 2006

The purpose of this Bulletin is to notify property and casualty insurers of House Bill 760, which is effective January 1, 2007, and its impact on the Insurance Article.

House Bill 760 splits Section 27-605 of the Maryland Insurance Article into two sections. Due to the concurrent promulgation of HB 570 (2006), which splits and renumbers most of the provisions in Title 27, Subtitle 6 of the Insurance Article, the two new sections created by HB 760 have been numbered 27-613 and 27-614. The new Section 27-605 governs insurers' cancellation, non-renewal or reduction in coverage under a policy of private passenger motor vehicle liability insurance. The new Section 27-605.1 governs increases in the premiums for private passenger motor vehicle liability policies.

27-613

The new Section 27-613 is based on the current language of Section 27-605. House Bill 760 removes all subsections relating to premium increases (as that topic is now addressed in Section 27-614), and amends certain of the remaining provisions.

The new Subsections 27-613(a) and (b) clarify that Section 27-613 is applicable only to private passenger motor vehicle liability coverage. The Maryland Automobile Insurance Fund ("MAIF") is specifically excluded from the coverage of the new Section 27-613.

The new Subsection 27-613(c)(4)(i) amends the statutory requirements relating to an insurer's notice of a proposed cancellation, non-renewal or reduction in coverage. Specifically, the insurer's statement of actual reason for taking the proposed action, that is required to be included in the notice, must include a brief statement of the basis(es) for the action.

Subsection 27-613 (c)(4) establishes statutory minimums for the information that must be contained in an insurer's statement of the basis(es) for its actions.

- If the insurer's proposed action arises, wholly or partly, from an accident, the statement must include the name of the driver involved in the accident, the date of the accident, and, if fault was a material factor in the insurer's proposed action, a statement that the driver was at fault.
- If the insurer's proposed action is due, wholly or partly, to a violation of motor vehicle laws, the statement must include, at a minimum, the name of the driver who received the violation, the date of the violation, and a description of the violation.
- If the insurer's proposed action is due, wholly or partly, to the claims history of an insured, the statement must include, at a minimum, a description of each claim that is the basis for the insurer's action.

If applicable, each statement must also specify: (1) whether the insurer's action is based on a violation of law, policy terms or conditions, or the insurer's underwriting standards; (2) whether the insurer's action is based on a material misrepresentation; and (3) any other information that is the basis for the insurer's proposed action.

The new Subsection 27-613 (c)(4)(iii) prohibits the Commissioner from disallowing a private passenger motor vehicle liability insurer's proposed cancellation, non-renewal or reduction in coverage if the insurer's statement of actual reason for the proposed action contains erroneous information, as long as in absence of the erroneous information, the notice provides a sufficient basis to support the insurer's proposed action.

House Bill 760 amends Subsection 27-613(g)(6), which sets forth a private passenger motor vehicle liability insurer's burden of proof at a hearing on a challenge to the insurer's proposed cancellation, non-renewal or reduction in coverage. Under the new Subsection 27-613(g)(6), the burden of proof is on the insurer to establish that the proposed action is in accordance with the insurer's filed rating plan, its underwriting standards, or the lawful terms and conditions of the policy relating to a cancellation, non-renewal or reduction in coverage, as applicable, and is not in violation of Section 27-501 of the Insurance Article.

27-614

Just as with the new 27-613, the new Section 27-614 applies only to private passenger motor vehicle liability insurance, and it does not apply to MAIF.

Notice of Premium Increases

The new Subsection 27-614(c)(1) contains a specific requirement that an insurer send notice of an increase in the total premium for a policy of private passenger motor vehicle liability insurance at least 45 days before the effective date of the increase. In Section 27-614, the terms “increase in premium” and “premium increase” include an increase in total premium for a policy due to a surcharge, a retiering or other reclassification of an insured, or the removal or reduction of a discount. However, a notice of premium increase is not required to be sent when the increase is part of a general increase which has been filed in accordance with Title 11 of the Insurance Article and which does not result from a reclassification of the insured.

The notice must be in duplicate, on a form approved by the Commissioner, and must be sent to the last known address of the insured, by certificate of mail. The notice may, however, accompany, or be included in, the renewal offer or policy.

Subsection 27-614(c)(5) establishes statutory minimums for the information that must be contained in the notice of premium increase. The notice must state, in clear and specific terms, the premium for the current policy period, the premium for the renewal policy period, and the basis for the increase. There is no longer any requirement that the premium increase be broken down by line of coverage; rather, the notice must simply include the total expiring premium and the total new premium along with a clear and specific statement providing the reason(s) for the increase.

- If the increase is due, wholly or partly, to an accident, the notice must identify the name of the driver involved in the accident, the date of the accident, and, if fault is a material factor in the insurer’s action, a statement that the driver was at fault.
- If the increase is due, wholly or partly, to a violation of Maryland motor vehicle laws or the vehicle laws of another State or territory of the United States, the notice must identify the name of the driver who received the violation, the date of the violation and a description of the violation.
- If the increase is due, wholly or partly, to the claims history of an insured, the notice must include a description of each claim that is the basis for the insurer’s proposed increase.
- Each notice must also state, in clear and specific terms, any other information that is the basis for the insurer’s proposed increase.

All notices of premium increase must advise insureds:

- that they should contact their producer, or the insurer, for a review of the premium if they have a question about the increase, or if they believe the information in the notice is incorrect;
- that they have a right to protest the premium increase by sending a copy of the notice to the Administration along with the insured’s address, daytime telephone

number and a brief statement of the reason why the insured believes the increase is incorrect; and,

- in the case of a premium increase of more than 15% for the entire policy, each notice shall notify the insured of the right to request a hearing before the Commissioner;
- of the Administration's mailing address and fax number; and
- each notice must also advise the insured that the Commissioner shall order the insurer to pay reasonable attorney fees incurred by the insured for representation at a hearing if the Commissioner finds that: (1) the actual reason for the insurer's proposed increase is not stated or is not in accordance with the Insurance Article or the insurer's filed rating plan, and (2) the insurer's conduct in maintaining or defending the proceeding was in bad faith, or that the insurer acted willfully in the absence of a *bona fide* dispute.¹

Protest of Proposed Premium Increases

The new Subsection 27-614(d) sets forth a thirty (30) day deadline for insureds to protest a proposed premium increase. The Commissioner is required to notify an insurer of the filing of a protest.

The new Subsection 27-614(d)(3)(i) provides that a protest filed with the Commissioner does not stay the insurer's proposed increase, with one exception. The Commissioner is permitted to specifically order a stay of a proposed increase of greater than 15% if the Commissioner finds that the proposed increase may cause the policyholder undue harm and is in violation of the insurer's filed rating plan. As such, this stay procedure is applicable only to those complaints where an insurer has deviated from its filed rating plan. The new statutory language does not permit a stay with respect to complaints based solely on the phrasing of language in a notice.

Upon receipt of a protest, the Commissioner will review the insurer's notice and determine whether the insurer's action comports with its filed rating plan and the requirements of the Insurance Article. The Commissioner will then either dismiss the protest or disallow the insurer's proposed action, and provide written notice of the determination. The Commissioner may not dismiss a protest based solely on an insured's failure to provide a reason that the insured believes the premium increase is incorrect.

Aggrieved parties may request a hearing on the Commissioner's decision only in those instances where the proposed premium increase exceeds 15% for the entire policy. Upon receipt of a proper hearing request, the Commissioner is required to hold a hearing within a reasonable time, provide the parties at least ten (10) days advance notice of the hearing date, and conduct the hearing in accordance with the provisions of the Administrative Procedure Act – Contested Cases, which is set forth in Title 10, Subtitle 2 of the State Government Article of the Maryland Annotated Code.

¹ This portion of the statute adopts the burden of proving entitlement to attorney fees currently set forth in the Administration's regulation designated COMAR 31.08.03.04.

At the hearing, the insurer has the burden of proving that the proposed increase comports with both its filed rating plan and the provisions of the Maryland Insurance Article. In seeking to meet its burden, the insurer may rely only upon the reasons set forth in its notice of premium increase.

The Commissioner's order shall be issued within 30 days after the hearing. If the Commissioner finds that the insurer has met its burden of proof, the Commissioner will dismiss the protest. If the insurer's proposed action has been stayed, the Commissioner will allow the proposed increase to be implemented as of the later of the insurer's proposed effective date or thirty (30) days after the date of the determination.

In the event that the Commissioner finds that the insurer has not met its burden, the Commissioner will disallow the action, and order the insurer to pay the insured's reasonable attorney fees if the insurer has conducted or maintained the proceeding in bad faith, or if the insurer acted willfully in the absence of a bona fide dispute.²

Insurers must return all disallowed premium received from the insured within thirty (30) days of disallowance of an increase with interest on the disallowed premium received at the rate of 10% per year from the date the premium was received, to the date the premium is returned. The rate of interest increases to 20% per year on the thirty-first (31st) day following the disallowance.

Finally, please note that references to "certificate of mailing" in Section 27-613 were amended to read "certificate of mail." Section 27-614 also contains a number of references to "certificate of mail." The position of the Administration with respect to what is required by "certificate of mail" and "certificate of mailing" is set forth in the MIA's Bulletin 05-15, currently posted on the Administration's web site, which is located at www.mdinsurance.state.md.us.

Any questions or comments regarding this Bulletin should be addressed to Karen S. Straughn, Director, Property & Casualty Complaints and Investigation Unit, 410-468-2332 or kstraughn@mdinsurance.state.md.us.

R. Steven Orr, Insurance Commissioner

By: _____
P. Randi Johnson, Associate Commissioner
Property & Casualty

² See fn. 2.