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JAMES V. MCMAHAN, III
Deputy Commissioner

P. RANDI JOHNSON
Associate Commissioner
Property and Casualty

525 St. Paul Place, Baltimore, Maryland 21202-2272
Direct Dial: 410-468-2301 Fax: 410-468-2306
Email: prjohnson@mdinsurance.state.md.us
1-800-492-6116 TTY: 1-800-735-2258

BULLETIN 06-28

To: All Property & Casualty Insurers

RE: Frequently Asked Questions about Implementation of HB 760

Date: November 22, 2006

During the 2006 legislative session, the Maryland General Assembly enacted House Bill 760, which will become effective on January 1, 2007.¹ The Bill repeals and reenacts certain provisions of the Insurance Article that govern the rights of private passenger automobile insurance policyholders regarding certain actions of their insurers. Among other things, the Bill changes the form and the content of the notice that insurers must give to policyholders before cancelling, non-renewing, reducing coverage or increasing the premium on a private passenger automobile insurance policy.

A number of private passenger automobile insurers and related trade groups have approached the Maryland Insurance Administration (MIA) with questions concerning the implementation of these statutory changes, particularly with respect to the form and the content of notices that will be sent prior to January 1, 2007 for actions that will be effective after January 1, 2007. In order to assure that the MIA's position on these questions is available to all

¹ See Bulletin 06-24

interested persons, including policyholders, the MIA is issuing this Bulletin, which sets forth the questions posed and the responses provided regarding the form and content of the notices that must be sent in the aforesaid circumstances.

1. Must the Form and Content of Notices Relating to the Proposed Cancellation, Non-renewal, Reduction in Coverage, or Increase in the Premium of a Private Passenger Auto Policy, Comply with the Law That is in Effect on the Day That the Notice Is Sent or the Law That Will Be in Effect on the Day That the Proposed Action Will Become Effective?

The MIA believes that the notice that an insurer is required to send in connection with the proposed cancellation, non-renewal, reduction in coverage, or increase in premium of a private passenger automobile insurance policy (“Notices”) must comply with the law that is in effect on the day on which the notice is issued.² This conclusion is supported not only by the literal language of the current statutory law, but also is compelled by the fact that the Notices at issue are intended not only to inform policyholders of the insurer’s proposed action, but of the insured’s statutory right to protest that proposed action, including informing the insured of the substantive and procedural rights available to the insured through the administrative process.

An insured that wishes to protest the proposed action of an insurer under § 27-605 must file his protest with “the Commissioner within 30 days after the mailing date of the notice.” IN §27-605(f)(2). The actions which the Commissioner may or must take in connection with such a

² The MIA bases this conclusion on an analysis of the particular provisions of HB 760, including: a) language that is currently contained in IN §27-605(b)(1) that was amended or deleted in the enactment of IN §27-613 and IN §27-614; and b) the practical impact of changes relating to the substantive rights of policyholders that are triggered by the date on which their protest is filed and not the date on which the notice is sent or the date on which the company's proposed action will become effective. Consequently, the position taken by the MIA with regard to the appropriate notice to be given in this narrow and specific circumstance is not an indication on the position that may be taken by the MIA with respect to other circumstances. Where the language of the statute allows, the MIA may conclude that an action proposed to be taken after the effective date of a statutory enactment can only be taken if the notice of that action conformed to the new enactment, regardless of the provisions in effect at the time the notice was required to be sent.

protest are determined by the date on which the *protest* is filed, not the date on which the proposed action will become effective.

For example, under the current statutory law, which remains in effect until December 31, 2006, when a protest is filed, “[e]xcept for a premium increase of 15% or less for the entire policy, a protest filed with the Commissioner stays the proposed action of the insurer pending a final determination by the Commissioner.” IN §27-614(f)(4). However, effective January 1, 2007, new §27-614 alters this result. Under the new law, “a protest filed with the Commissioner does *not* stay the proposed action of the insurer.” (Emphasis added).

A notice that is mailed on November 30, 2006 with regard to a 20% premium increase that will be effective January 1, 2007 is only subject to protest through December 30, 2006. Similarly, a notice that is mailed to an insured on December 15, 2006 regarding a premium increase of 20% that will be effective on February 1, 2007, could result in the filing of a protest prior to December 31, 2006. In both circumstances, the insured’s protest results in an automatic stay of the proposed premium increase.

Because Notices mailed prior to January 1, 2007 may, and in some cases must, result in protests that are filed prior to January 1, 2007, the MIA believes that only Notices that are compliant with the law at the time that the Notice is sent can fairly and accurately inform the policyholder of those protest rights that are available to the policyholder. Consequently, the MIA takes the position, with respect to the implementation of HB760 and the transition from IN §27-605 to IN §§27-613 and 27-614 that it is the law in effect on the date Notices are sent that controls the form and content of the Notices.³

³ The MIA appreciates that Notices that are compliant with §27-605 necessarily inform the insured of rights regarding protests that are not available to the insured under new §27-614 for protests that are filed after January 1, 2007. The consequence of that is addressed *infra* in connection with Question 3.

Presently, and through December 31, 2006, the statutory law that governs what an insurer must do to effect the aforesaid proposed actions is contained, in part, in IN §27-605. Subsection (c)(1) of that section provides that “[a]t least 45 days before the proposed effective date of the action, an insurer that intends to taken an action subject to this section must send written notice of its proposed action to the insured” A description of the physical form and content of the notice is detailed in IN §27-605(b)(2) - (4) and the precise language of the form is set forth in COMAR 31.08.03. These are the Notices that should be used on and before December 31, 2006.

The MIA has promulgated regulations, which will be effective on January 1, 2007, that set forth the form and content of the new Notices as required by §§27-613 and 27-614. The new Notice forms should be used on and after January 1, 2007.

2. What Position Will the MIA Take with Respect to Insurers That Have Already Altered Their Systems and Are Sending Notices That Are Not Compliant with Existing in §27-605, but Are Compliant with New IN §§ 27-613 and 27-614?

The MIA appreciates that the question of whether the existing law or the new law applies to the form and content of Notices mailed on or before December 31, 2006 is an issue that is not readily resolved by the language of HB 760, which does not expressly address the timing issues outlined above. Answering this question involves a complicated analysis that ultimately turns on the interpretation of legislature intent. For that reason, the MIA will address on a case by case basis the impact of deficiencies in Notices that result from the insurer’s use of forms compliant with §§27-613 and 27-614 prior to January 1, 2007.⁴

⁴ In that regard, the MIA notes that the form and content of Notices that must be given under §27-613 with respect to cancellation, nonrenewal and reductions in coverage under private passenger auto policies are substantially similar to the form and to that portion of the content of Notices required under §27-605 that relate to those particular proposed actions. Consequently, while the MIA will review deviations on a case by case basis, the MIA believes that as a general matter, a Notice given to an insured in connection with the cancellation, nonrenewal or reduction in coverage that complies with §27-613 will, in most instances, be compliant with §27-605, as it relates to those proposed actions.

3. If a Notice That Relates to a Premium Increase Greater Than 15% For the Total Premium Contains Information Regarding the Automatic Stay Currently Afforded under §27-605(f)(4), but the Insured Does Not File a Protest Until After January 1, 2007, Will the MIA Stay the Premium Increase?

Yes. For protests filed after January 1, 2007 in connection with premium increases greater than 15% for the total premium, the MIA will stay the premium increase upon the filing of the protest if the Notice sent to the policyholder included language that advised the policyholder that he had a right to such a stay.

HB 760 is ambiguous in that it fails to clearly address the notice and protest rights of individuals where the action proposed by the company is not effective until after January 1, 2007, but the notice must be given and protests may (or must) be filed with the Commissioner on or before December 31, 2006. Relying on its interpretation of legislative intent, and its expertise, the MIA has construed the law to require compliance with the notice requirements in effect at the time Notices are sent. This necessarily means that with respect to some proposed actions, the protest rights represented to the policyholder are in conflict with the protest rights that are actually available to the policyholder for protests filed after January 1, 2007. This conflict, however, is inherent in the statutory law, which is best read to require insurers to send Notices that contain a statement of protest rights that is arguably inaccurate (at least in part) after January 1, 2007.

Clearly, however, the legislature would not have intended policyholders to be misled about their protest rights. Consequently, it is the MIA's belief that the legislature intended policyholders to be afforded those rights articulated on the Notice forms provided to those policyholders. The MIA will, therefore, afford policyholders who protest premium increases in excess of 15% the rights that are represented to them in the Notices that carriers are required to provide prior to December 31, 2006, even if the protest is filed after January 1, 2007.

Additional questions regarding the implementation of HB 760 may be directed to Karen S. Straughn, Director of Property & Casualty Consumer Complaints at 410-468-2332 or kstraughn@mdinsurance.state.md.us.

R. Steven Orr, Insurance Commissioner

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