



COMMONWEALTH OF MASSACHUSETTS
Office of Consumer Affairs and Business Regulation
DIVISION OF INSURANCE

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WITHDRAWN - MARCH 18, 2009

BULLETIN 2009-01

TO: Insurance Companies and Insurance Company Groups Issuing or Renewing Private Passenger Motor Vehicle Insurance Policies in Massachusetts

FROM: Nonnie S. Burnes, Commissioner of Insurance

RE: The Board of Appeal on Motor Vehicle Liability Policies and Bonds and Appeals of "Safe Driver Insurance Plan" Motor Vehicle Accident Surcharges in a Competitive Private Passenger Motor Vehicle Insurance Market

DATE: January 8, 2009

This Bulletin provides guidance to insurance companies and insurance company groups issuing or renewing private passenger motor vehicle insurance policies in the Commonwealth (collectively "Insurers") regarding the application of "Safe Driver Insurance Plan" motor vehicle at fault accident surcharges and policyholder appeals for those accident surcharges ("SDIP Surcharge Appeals") to the Board of Appeal on Motor Vehicle Liability Policies and Bonds¹ ("Board of Appeal").

As part of fixing-and-establishing private passenger motor vehicle insurance rates under M.G.L. c. 175, § 113B, the Commissioner of Insurance was charged with establishing the "Safe Driver Insurance Plan" ("SDIP"), a merit rating plan which provided for the adjustment of insurance rates and premiums on the basis of motor vehicle accident claims and traffic law violations. Certain at fault accidents, traffic law violations and comprehensive insurance coverage claims constituted "surchargeable incidents" under the SDIP. A "surchargeable incident" includes an

¹ The Board of Appeal on Motor Vehicle Liability Policies and Bonds is established pursuant to M.G.L. c. 26, § 8A.

accident for which the operator was more than 50% at-fault ("At-fault Accident"). A surchargeable incident under the SDIP may have resulted in an increased premium for the at fault motor vehicle operator in accordance with the SDIP. Any operator who was aggrieved by his or her Insurer's determination that the operator was more than 50% at-fault in an accident under the SDIP during a fixed-and-established market was entitled to appeal the Insurer's decision to the Board of Appeal pursuant to M.G.L. c. 175, § 113P.

In a competitive market, Insurers' private passenger motor vehicle insurance rates are not subject to the provisions of the Commissioner's SDIP, previously applicable to rates established under M.G.L. c. 175, § 113B. SDIP Surcharge Appeals under M.G.L. c. 175, § 113P do not exist under the statutory framework of a competitive market. Rather, Insurers are entitled to implement their own merit rating plans to utilize a motor vehicle operator's past motor vehicle insurance claim and traffic law violation information to calculate the applicable policy premium. Individual Insurer merit rating plans are filed with and reviewed by the Division of Insurance ("Division") as part of an Insurer's rate filing.

Insurers may treat At-fault Accidents and traffic law violations in a variety of ways under their own merit rating plans in a competitive market. For example, some Insurers provide "accident forgiveness" under which the Insurer will not increase a policyholder's premium for the first At-fault Accident under the policy. Other Insurers provide "disappearing deductibles" under which the Insurer will reduce incrementally a policyholder's deductible for each of the policyholder's "accident free" years while insured with that Insurer. Additionally, if a policyholder is involved in an At-fault Accident or traffic law violation that results in an increase in his or her policy premium with his or her current Insurer, that policyholder may elect to shop to find another Insurer that may treat the At-fault Accident or traffic law violation more favorably. Of course, any policyholder who thinks he or she is being treated unfairly by an Insurer may call the Division's Consumer Services Section for assistance.

Insurers have continued to follow the procedures regarding SDIP Surcharge Appeals pursuant to 211 CMR 134.00, *et seq.*, since the onset of the transition year to managed competition on April 1, 2008, notwithstanding the change in the statutory framework under which this market now operates. In order to facilitate an orderly transition from this longstanding, but now no longer applicable, practice for both Insurers and affected consumers, I am initiating new procedures for Insurers providing notices of At-fault Accident decisions to involved operators or policyholders.

For private passenger motor vehicle insurance policies issued or renewed with effective dates on or after April 1, 2008 under which an At-fault Accident claim is paid on or after April 1, 2009, Insurers shall notify the involved operator or policyholder within the time frames provided in 211 CMR 134.00, *et seq.* of payment of the At-fault Accident claim, in accordance with requirements to be set forth in the Motor Vehicle Insurance Merit Rating Board's ("MRB")² manuals. Such notice shall contain all the information identified as required in the attached Appendix A. This includes, but is not limited to, the title and the telephone number of the Insurer's representative who can respond to any questions or concerns regarding the notice. The

² The Motor Vehicle Insurance Merit Rating Board is established pursuant to M.G.L. c. 6, § 183.

form also shall notify the involved operator of the operator's right to request an additional review of the accident circumstances underlying the original determination that the operator was more than 50% at fault by a claims manager of the Insurer. The Insurer's additional review must be completed within 30 days of the involved operator's request for such review. The Insurer may not charge the involved operator for this additional review. The Insurer also shall enclose a copy of the Division's Bill of Rights with the notice of the At-fault Accident.

Insurers also shall notify the involved operator or policyholder of the reversal of an At-fault Accident determination in accordance with requirements to be set forth in the MRB's manuals. Such notice also shall contain all the information identified as required in the attached Appendix B.

All Insurers must employ their individual merit rating plans in a fair and equitable manner. The Division expects that any review of an At-fault Accident will be genuine, complete and meaningful. The Division expects that Insurers will use generally accepted standards of fault in making their determinations and that the standards will be applied uniformly and consistently. The Division will use the current standards of fault in use at the Board of Appeal as the benchmark against which to measure the quality of the Insurer's standards of fault. In addition, the Division expects that the compensation for any one reviewing such an At-fault Accident determination will be unaffected by his or her decision(s).

Insurers must maintain records regarding At-fault Accident determinations for at least three years so that the Division may conduct market conduct examinations to ensure that Insurers are meeting their obligations. Insurers shall be on notice that the Division is prepared to use its substantial disciplinary tools, from fines to license suspension, in the event that an Insurer fails to meet its obligations as outlined in this Bulletin.

APPENDIX A

SAMPLE NOTICE TO OPERATOR OF AN AT-FAULT ACCIDENT REPORT

The _____ Insurance Company (“_____”) is providing this notice to inform you that an at-fault accident decision for a claim recently paid by “_____” is being reported to the Merit Rating Board based on our determination that as the operator of the vehicle, you were more than 50% at fault for the accident described below. This at-fault accident may affect the cost of your auto insurance in the future.

OPERATOR INFORMATION*				
Name:	*			
Address:	*			
City/State:	*			
Zip Code:	*			
Operator's Licensing State:	*			
ACCIDENT INFORMATION*				
Accident Date	Claim Date	State	Policy Number	Claim Number
*	*	*	*	*
POLICYHOLDER INFORMATION (* only if different from the operator information)				
Name:	*			
Address:	*			
City/State:	*			
Zip Code:	*			
Policyholder's Licensing State:	*			

If you were not the operator of the vehicle involved in the accident described above, or if you believe you were not more than 50% at fault in this accident, or the operator's mailing address is different from the address shown above, please contact us within 30 days of this notice at:

- (Title of Company Representative *)
- (Telephone Number of Company Representative *)
- (Insurance Company Name *)
- (Insurance Company Address *)
- (Insurance Company Phone *) (Insurance Company Website *)

*You have the right to request an additional review by one of our claims managers of our determination that you were more than 50% at fault in this accident. We must complete this additional review within 30 days of our receipt of your request.

*** INDICATES REQUIRED CONTENT OF NOTICE TO OPERATOR**

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APPENDIX B

SAMPLE NOTICE TO OPERATOR OF AN AT-FAULT ACCIDENT REPORT REVERSAL

The _____ Insurance Company (“_____”) is providing this notice to inform you that we have notified the Merit Rating Board to reverse the at-fault accident decision described in this notice that was previously reported to them because we have received additional information that indicates that, as the operator of the vehicle, you were not more than 50% at fault for the accident.

OPERATOR INFORMATION*				
Name:	*			
Address:	*			
City/State:	*			
Zip	*			
Operator's Licensing State	*			
ACCIDENT INFORMATION*				
Accident Date	Claim Date	State	Policy Number	Claim Number
*	*	*	*	*
POLICYHOLDER INFORMATION (* only if different from operator information)				
Name:	*			
Address:	*			
City/State	*			
Zip Code	*			
Policyholder's Licensing State	*			

If you have any questions concerning this notice, please contact us at:

- (Title of Company Representative *)
- (Telephone Number of Company Representative *)
- (Insurance Company Name *)
- (Insurance Company Address *)
- (Insurance Company Phone *) (Insurance Company Website *)

*** INDICATES REQUIRED CONTENT OF NOTICE TO OPERATOR**