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**BULLETIN 2010-06**

TO: Motor Vehicle Salespeople and Insurance Producers and Insurance Companies that Solicit, Negotiate or Sell Motor Vehicle Insurance Policies in Massachusetts

FROM: Joseph G. Murphy, Commissioner of Insurance

DATE: March 11, 2010

RE: Involvement of Motor Vehicle Salespeople in the Solicitation, Negotiation or Sale of Motor Vehicle Insurance

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The Division of Insurance (“Division”) has received complaints that certain motor vehicle salespersons are assisting their customers with the purchase of motor vehicle insurance. In some cases motor vehicle salespersons allegedly are recommending particular insurance companies that sell motor vehicle insurance policies to their customers. In Massachusetts only licensed insurance producers may sell or attempt to sell, or negotiate or solicit insurance, including motor vehicle insurance. This Bulletin reminds insurance companies and those individuals involved in the sale, finance, registration or insurance of motor vehicles of the Massachusetts rules about placing insurance on motor vehicles. These rules reflect the longstanding principle that only those who have demonstrated knowledge and competence about motor vehicle insurance by obtaining an insurance license from the Division are permitted to advise consumers about the purchase of such coverage.

An insurance company violates Massachusetts insurance law if it compensates an unlicensed person for engaging in activities that require an insurance producer’s license. G.L. c. 175, § 175.

In order to sell, solicit or negotiate insurance in the Commonwealth for any class or classes of insurance, a person must be licensed for that line of authority. G.L. c. 175, § 162I.<sup>1</sup> Only a duly licensed producer can sell, solicit or negotiate a property or casualty insurance policy, such as a motor vehicle liability insurance policy, off the premises of an insurance agency or company. G.L. c. 175, § 162.<sup>2</sup> Massachusetts law defines these actions as follows:

- “soliciting” is an attempt to sell insurance or asking or urging a person to apply for a particular kind of insurance from a particular company;
- “selling” is exchanging a contract of insurance by any means, for money or its equivalent, on behalf of an insurance company; and
- “negotiating” about insurance occurs if a person confers directly with or offers advice directly to a purchaser of a particular contract of insurance about its benefits, terms or conditions, and either sells or obtains insurance for a purchaser from an insurance company.

G.L. c. 175, § 162H. Massachusetts law also prohibits anyone but a licensed insurance producer, licensed insurance advisor, insurance company employee or attorney at law from giving, or offering to give, any advice, counsel, recommendation or information with respect to accepting or procuring an insurance policy or contract from any insurance company for a fee. G.L. c. 175, §§ 177A and 177B.

The following examples illustrate the application of these guiding principles as they apply to obtaining insurance for a motor vehicle in the course of a sales or leasing transaction.

***Example 1: A motor vehicle salesperson advises a customer that he could save money by buying his motor vehicle insurance from The XYZ Insurance Company.*** The salesperson is improperly “soliciting” motor vehicle insurance because she is recommending or urging a person to apply for a motor vehicle insurance policy from a particular company.

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<sup>1</sup> Massachusetts law also imposes a fine upon anyone who, not being duly licensed as an insurance producer or adjuster, holds himself out to the public as being such a producer or adjuster, or as being engaged in the insurance business.

<sup>2</sup> Motor vehicle dealerships that possess Class 1 (new motor vehicle sales) and Class 2 licenses (used motor vehicle sales) may be involved in the sale of some types of insurance. The scope of this authority, however, is very narrow, being limited to the selling, negotiating and soliciting of guaranteed automobile protection insurance, a type of limited line credit insurance; and collecting a service charge in connection with insurance providing protection against the mechanical failure or mechanical breakdown of a motor vehicle or loss of use caused by such failure or breakdown. G.L. c. 140, §§ 58 and 59; c. 175, §§ 162J and 177.

*Example 2: A motor vehicle salesperson assists the customer to obtain insurance online by using his office computer to search for motor vehicle insurance for the customer while the customer watches.* The salesperson is violating Massachusetts insurance law because he is “negotiating” motor vehicle insurance for the customer by assisting the customer to “obtain” it.

*Example 3: A motor vehicle salesperson offers her customer the use of a computer at the motor vehicle dealership so that the customer can search for motor vehicle insurance, but the computer is preset to the website of a particular insurance company.* The salesperson is improperly “soliciting” motor vehicle insurance because she is asking or urging a person to apply for insurance from a particular company.

*Example 4. A motor vehicle salesperson who is arranging financing for the purchase of a motor vehicle tells his customer that she must purchase insurance from a particular insurance company.* The salesperson is violating Massachusetts law because he is making financing contingent on purchasing insurance from a particular insurance company. G.L. c. 175, § 193E.

*Example 5: The motor vehicle dealership maintains a computer terminal linked to the internet for the use of its customers.* A customer may use the terminal to search for insurance as long as the salesperson does not operate the computer, the computer is not preset to any particular insurance company’s website, and the salesperson does not recommend that the customer apply for motor vehicle insurance from a particular company. The salesperson may suggest that the customer start her search for motor vehicle insurance by visiting a site that provides general advice on the purchase of such insurance. A salesperson may always refer her customer to The Division’s website, [www.mass.gov/doi](http://www.mass.gov/doi) for such information.

The Division may initiate market conduct examinations to investigate these issues further and will use its full array of enforcement tools if it determines that prohibited practices are occurring in the motor vehicle insurance marketplace.