

RHODE ISLAND GOVERNMENT REGISTER
PUBLIC NOTICE OF PROPOSED RULEMAKING

AGENCY: Department of Business Regulation

DIVISION: Insurance

RULE IDENTIFIER: 230-RICR-20-5-2

REGULATION TITLE: AUTOMOBILE INSURANCE CANCELLATION AND RENEWAL PROVISIONS

ERLID: 9044

RULEMAKING ACTION: Proposed Rulemaking

TYPE OF FILING: Amendment

TIMETABLE FOR ACTION ON THE PROPOSED RULE:

Public notice date: May 4, 2018

End of comment period date: June 15, 2018

Hearing date: June 5, 2018

SUMMARY OF PROPOSED RULE: The rule regulates private passenger automobile insurance cancellation. The amendments are designed to respond to input from the public regarding the provisions discussed below. The substantive changes by section are:

§ 2.2 – The phrase “motor vehicle insurance” has been proposed to be replaced with “private passenger automobile” insurance to make the terminology consistent with the remainder of the regulation.

§ 2.3(A)(5) –A definition of delivered and delivery, incorporating the provisions of the Electronic Transactions Act is proposed to be added.

§ 2.3(A)(11) – Definition of “Renewal” is proposed to be amended to remove language concerning insurance policies written for less than or more than one year. The proposal would eliminate the language which deems those policies to have a policy period of 12 months. This proposal is made in response to a petition from insurers who object to the current position of the Department which allows overall rate increases for 6 month policies but prohibits surcharges from being applied except at the annual anniversary. This causes the statutory three-year period during which a surcharge can be imposed to be delayed in some instances and, therefore, to extend well past three years from the incident for which the surcharge was imposed. This change will only affect the timing of the surcharge but not the ultimate length of the surcharge which will remain at the statutorily mandated three years. The Department’s investigation into this issue has not found any other state which prohibits surcharges at policy anniversary.

§ 2.5 – The word “mailed” has been removed to allow notice to be sent electronically at the election of the insured.

§ 2.6 – The word “annual” has been removed to provide for six month policies.

§ 2.7(E) – Adds a section regarding insurers duties with regard to inaccurate information used in determining insurance score.

COMMENTS INVITED:

All interested parties are invited to submit written or oral comments concerning the proposed regulations by June 15, 2018 to the addresses listed below.

ADDRESSES FOR PUBLIC COMMENT SUBMISSIONS:

Mailing Address: 1511 Pontiac Avenue, Cranston, RI 02920

Email Address: elizabeth.dwyer@dbr.ri.gov

WHERE COMMENTS MAY BE INSPECTED:

Mailing Address: 1511 Pontiac Avenue, Cranston, RI 02920

PUBLIC HEARING INFORMATION:

Hearing date: June 5, 2018

Hearing Time: 10:00 AM

Hearing Location: 1511 Pontiac Avenue, Cranston, RI 02920

The place of the public hearing is accessible to individuals who are handicapped. If communication assistance (readers/interpreters/captioners) is needed, or any other accommodation to ensure equal participation, please call 401-462-9551 or RI Relay 711 at least three (3) business days prior to the meeting so arrangements can be made to provide such assistance at no cost to the person requesting.

FOR FUTHER INFORMATION CONTACT:

Elizabeth Dwyer, Esq., Deputy Director, Department of Business Regulation, 1511 Pontiac Avenue, Cranston, RI 02920 401.462-9617 elizabeth.dwyer@dbr.ri.gov

SUPPLEMENTARY INFORMATION:

Regulatory Analysis:

These proposed amendments will result in no adverse impact for small businesses.

Authority for This Rulemaking: R.I. Gen. Laws Chapter 27-9, §§ 27-9-7.2, 27-9-56, 31-47-18 and 45-19-17

Regulatory Findings:

In the development of the proposed amendment consideration was given to: (1) alternative approaches; (2) overlap or duplication with other statutory and regulatory provisions; and (3) significant economic impact on small business. No alternative approach, duplication, or overlap was identified based upon available information.

The Proposed Amendment:

Department of Business Regulation proposes to amend 230-RICR-20-05-2 as follows:

230-RICR-20-05-2

TITLE 230– Department of Business Regulation

CHAPTER 20 – Insurance

SUBCHAPTER 05 – Personal Lines - Automobile and Homeowners Insurance

PART 2 - Automobile Insurance Cancellation and Renewal Provisions

2.1 Authority

This Part is promulgated in accordance with R.I. Gen. Laws §§ 27-8-11, 27-9-1 et seq. and 31-47-4.

2.2 Purpose

The purpose of this Part is to set forth the limitations which apply to cancellation and renewal of private passenger automobile insurance policies. The provisions of this Part cannot be varied by the language of the insurance policy.

2.3 Definitions

A. As used in this Part:

1. "Automobile Liability Coverage" means coverage of bodily injury and property damage liability, medical payments and uninsured motorist coverages.
2. "Automobile physical damage coverage" means coverage of loss or damage to an automobile insured under the policy except loss or damage resulting from collision or upset.
3. "Automobile collision coverage" means coverage of loss or damage to an automobile insured under the policy resulting from collision or upset.
4. "Chargeable Loss Occurrence" means a chargeable accident as set forth in Part 3 of this Subchapter and R.I. Gen. Laws § 27-9-4(b), (d) and (e).
5. "Delivered" or "Delivery" means by the use of regular mail or electronic means if the parties have agreed to conduct the transaction by electronic means in accordance with R.I. Gen. Laws Chapter 42-127.1.
- ~~5-6.~~ "Insurance Score" means a number, rating or any categorization that is derived from an algorithm, computer application, model or other process that is based in whole or in part on credit history for the purposes of

predicting the future insurance loss experience of an individual applicant or insured.

~~6~~ 7. "Non-Chargeable Loss Occurrence" means any incident which results in any loss payment other than those incidents which fall within the definition of Chargeable Loss Occurrence.

~~7~~ 8. "Non-payment of Premiums" means failure of the named insured to discharge when due any of his or her obligations in connection with the payment of premiums on a policy of automobile insurance or any installment of such premium, whether the premium is payable directly to the insurer or its agent or indirectly under any premium finance plan or extension of credit.

~~8~~ 9. "Policy" means any private passenger automobile policy which includes automobile liability coverage, uninsured motorist coverage, automobile medical payments coverage, or automobile physical damage coverage, delivered or issued for delivery in this state. Provided however, that this Part shall not apply:

- a. to any policy which has been in effect less than sixty (60) days at the time notice of cancellation is mailed or delivered by the insurer unless it is a renewal policy, nor
- b. to any policy covering garage, automobile sales agency, repair shop, service station or public parking place operations hazards, nor
- c. to any policy providing insurance only on an excess basis.

~~9~~ 10. "Private Passenger Automobile" means any vehicle insured by a personal automobile insurance policy.

~~10~~ 11. "Renewal" or "to renew" means the issuance and delivery by an insurer of a policy superseding at the end of the policy period a policy previously issued and delivered by the same insurer, or the issuance and delivery of a certificate or notice extending the term of a policy beyond its policy period or term; ~~provided, however, that any policy with a policy period or term of less than twelve (12) months shall for the purpose of this section be considered as if written for a policy period or term of twelve (12) months. Provided, further, that for purposes of this Part any policy written for a term longer than one (1) year or any policy with no fixed expiration date shall be considered as if written for successive policy periods or terms of one (1) year and any termination by an insurer effective on an anniversary date of such policy shall be deemed a failure to renew.~~

2.4 Cancellation of Policy

- A. Effective sixty (60) days after the inception date of a policy, or if the policy is a renewal, effective immediately, the company shall not exercise its right to cancel the policy unless it is based on one (1) or more of the following reasons:
1. Non-payment of premium; whether payable directly to the company or its agent or indirectly under any premium finance plan or extension of credit, or
 2. The driver's license or motor vehicle registration of the named insured or any other operator who either resides in the same household or customarily operates an automobile insured under the policy has been under suspension or revocation or cancellation of the license during the policy period, or, if the policy is a renewal, during its policy period, or
 3. The insurance was obtained through fraudulent misrepresentation (subject to the limitation in § 2.10 of this Part), or
 4. There has been a violation of any of the terms or conditions of the policy, or
 5. The named insured or any other operator of the automobile either resident in the same household or who customarily operates the automobile is subject to epilepsy or heart attacks, provided such individual cannot produce a certificate from a physician testifying to unqualified ability to operate a motor vehicle, or
 6. The named insured or any other operator of the automobile either resident in the same household or who customarily operates the automobile has been convicted of or forfeits bail for three (3) or more violations, committed within a period of eighteen (18) months, of any ordinance or regulation limiting the speed of motor vehicles or any provision constituted a misdemeanor by the motor vehicle laws of any state, or
 7. The named insured or any other operator of the automobile either resident in the same household or who customarily operates the automobile has been convicted of or forfeits bail during the thirty-six (36) months immediately preceding the effective date of the policy, or during the policy term, for;
 1. any felony, or
 2. homicide or assault arising out of the operation of a motor vehicle, or criminal negligence in the operation of a motor vehicle resulting in death, or

3. operating a motor vehicle while in an intoxicated condition or, while under the influence of drugs, or
 4. leaving the scene of an accident without stopping to report, or
 5. theft of a motor vehicle, or
 6. making false statements in an application for a driver's license.
- B. During the policy period no modification of automobile physical damage coverage (except coverage for loss caused by collision) whereby provision is made for the application of a deductible amount not exceeding one hundred dollars (\$100) shall be deemed a cancellation of the coverage or of the policy. This section shall not apply to the failure to renew a policy.
- C. This Section shall not apply to policies issued pursuant to R.I. Gen. Laws §§ 31-33-8 and 31-47-16 through the Rhode Island Automobile Insurance Plan. Cancellation of those policies is governed solely by the terms of the Plan Manual as filed with and approved by the Department.

2.5 Cancellation Notice

- A. The provisions of § 2.4 of this Part shall apply to each and every coverage or limit afforded under the policy but the insurer, at its option and in lieu of outright cancellation, may reduce the limits afforded for automobile bodily injury liability and property damage liability (subject to compliance with the minimum financial security requirements) or cancel any other coverage, by ~~mailing~~ delivering to the insured at the address shown in the policy written notice stating the specific reason or reasons relied upon by it for its action and when, not less than thirty (30) days thereafter, such cancellation or reduction of limits shall be effective.
- B. No insurer shall exercise its right to cancel a policy unless a written notice of cancellation is ~~mailed or~~ delivered to the named insured, at the address shown in the policy, at least thirty (30) days prior to the effective date of cancellation, except that when cancellation is for non-payment of premium such notice shall be ~~mailed or~~ delivered to the named insured ~~at the address in the policy~~ at least ten (10) days prior to the effective date of cancellation and shall include or be accompanied by a statement of the reason therefore. This section shall not apply to the failure to renew a policy.
- C. This Section shall not apply to policies issued pursuant to R.I. Gen. Laws §§ 31-33-8 and 31-47-16 through the Rhode Island Automobile Insurance Plan. Cancellation of those policies is governed solely by the terms of the Plan Manual as filed with and approved by the Department.

2.6 Notice of Nonrenewal

- A. Unless the insurer, at least thirty (30) days in advance of the end of the policy period, ~~mails or~~ delivers to the named insured at the address shown in the policy, notice of its intention not to renew the policy or to condition its renewal upon reduction of limits or elimination of any coverages afforded under the policy, together with a statement of its reasons therefor, the named insured shall be entitled to renew the policy upon payment of the premium when due. The renewal policy shall provide that the insurer shall not cancel such policy or reduce any of the limits or cancel any of the coverages provided thereunder except as provided in §§ 2.4 and 2.5 of this Part. This Section shall not apply in case of nonpayment of premium as required by the insurer for the expiring policy or renewal thereof. Renewal of a policy shall not constitute a waiver or estoppel with respect to grounds for cancellation which existed before the effective date of such renewal.
- B. No insurance company shall fail to renew a private passenger automobile policy because of a loss occurrence only, unless a Chargeable Loss Occurrence or more than two (2) Non-Chargeable Loss Occurrences, involving insureds, have taken place within the ~~annual~~ policy ~~year~~ period.
- C. No insurance company shall fail to renew a private passenger automobile policy solely because the insured has attained the age of sixty-five (65) years or older.
- D. Notwithstanding the failure of an insurer to comply with this Section, the policy shall terminate on the effective date of any other insurance policy with respect to any automobile designated in both policies.
- E. This Section shall not apply to policies issued pursuant to R.I. Gen. Laws §§ 31-33-8 and 31-47-16 through the Rhode Island Automobile Insurance Plan. Nonrenewal of those policies is governed solely by the terms of the Plan Manual as filed with and approved by the Department.

2.7 Use of Insurance Score in Rating or Underwriting

- A. An insurer may not decline insurance for a new customer based solely on an Insurance Score, or absence of an Insurance Score.
- B. An insurer which uses an Insurance Score in rating or underwriting must demonstrate the statistically predictive nature of the Insurance Score utilized in conjunction with its rate filing.
- C. An insurer must confirm that none of the “negative factors” listed in R.I. Gen. Laws § 27-9-56(c) have been utilized in determining an Insurance Score or in the rating or underwriting process.

- D. No insurer shall cancel, fail to renew or increase the rate of an existing customer based solely on a worsening in a customer's Insurance Score unless:
1. the worsening is due to a bankruptcy, tax lien, garnishment, foreclosure or judgment, or
 2. if a subsequent Insurance Score no sooner than six (6) months later confirms the worsening in score.
- E. If a credit bureau determines that disputed information is inaccurate or incorrect and such information was used in determining an insurance score which resulted in a denial, cancellation or nonrenewal of or higher premiums or less favorable policy terms for a consumer, the insurer shall, within thirty (30) days of receiving notice of correction, reissue or re-rate the policy by refunding the amount of the overpayment of premium based on the corrected insurance score retroactive to the shorter of the last twelve (12) months of coverage or the actual period of coverage.

2.8 Notice of Eligibility for State Plan

When a policy is cancelled or non-renewed, other than for non-payment of premiums or the insured's having obtained substitute coverage or if the policy had been issued through the Rhode Island Automobile Insurance Plan, the insurer shall notify the insured of his or her possible eligibility for insurance through the Rhode Island Automobile Insurance Plan. Such notice shall accompany or be included in the cancellation or non-renewal notice. The notice must be clearly identifiable by the insured. The notice must provide information that insured may contact a licensed insurance producer for assistance in obtaining coverage through the Rhode Island Automobile Insurance Plan.

2.9 Notice of Financial Responsibility

Every notice of cancellation or non-renewal sent to the insured shall include a statement that financial security is required to be maintained continuously throughout the registration period and that failure to maintain financial security shall subject the violator to a mandatory suspension of license and registration. The statement of financial security shall be in a type face not smaller than 12 point pursuant to R.I. Gen. Laws § 31-47-4(c).

2.10 Prohibition of Rescission of Automobile Liability Coverage

No insurer may rescind *ab initio* coverage required by the terms of R.I. Gen. Laws § 31-47-1 *et seq.* Whether or not rescission *ab initio* is available for other coverages is not addressed by this Part and shall be governed by the applicable statutory and case law of this state. Nothing in this section shall vary the ability of the insurer to cancel automobile liability coverage on a prospective basis, as long

as the requirements of all statutes and Regulations governing cancellation are met.

2.11 Nonliability of Insurer

- A. There shall be no liability on the part of and no cause of action of any nature shall arise against any insurer, its authorized representatives, its agents, its employees, or any firm, person or corporation furnishing either to the insurer or the Insurance ~~Commissioner~~ Division information as to reasons for cancellation, reduction of limits, elimination of coverages, conditioned renewal or non-renewal, for any statement made by any of them in any written notice of cancellation, reduction of limits, elimination of coverages, conditioned renewal or non-renewal, or in any other communication, oral or written, specifying the reasons for cancellation, reduction of limits, elimination of coverages, conditioned renewal or non-renewal, or the providing of information pertaining thereto, or for statements made or evidence submitted at any hearings conducted in connection therewith.
- B. If mailed, ~~Pp~~ proof of mailing of a notice of cancellation, reduction of limits, elimination of coverages or of intention not to renew or proof of the mailing of the reasons therefor, to the named insured at the address shown in the policy, shall be sufficient proof of the giving of notice and the giving of reasons required by this Part. A certificate of mailing as certified by the U.S. Postal Service will satisfy the proof of mailing requirement.

2.12 Automatic Termination of Excess Automobile Policy

An excess automobile policy may provide that it shall automatically terminate if the primary policy terminates, whether by cancellation, non-renewal or otherwise and such an automatic termination provision shall not be deemed a cancellation or non-renewal for the purpose of this Part. As used in this Part, "excess automobile policy" means a policy which affords automobile bodily injury liability insurance and automobile property damage liability insurance restricted to a limit of liability in excess of that provided by another designated policy containing limits of liability which are at least equal to those required by the Financial Responsibility Law of Rhode Island.

2.13 Severability

If any section, term, or provision of this Part should be adjudged invalid for any reason, that judgment should not effect, impair, or invalidate any remaining section, term or provision, which shall remain in full force and effect.