

**RHODE ISLAND GOVERNMENT REGISTER**  
**PUBLIC NOTICE OF PROPOSED RULEMAKING**

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**AGENCY:** Department of Business Regulation

**DIVISION:** Insurance

**RULE IDENTIFIER:** 230-RICR-20-5-3

**REGULATION TITLE:** AUTOMOBILE INSURANCE RATING

**ERLID:** 9533

**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 rating. The amendments are designed to respond to input from the public regarding the provisions discussed below. The substantive changes by section are:

§ 3.3(A)(10) – 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 renewal.

§ 3.6(A) – Removes the sentence indicating that the insurer must offer the lowest premium within the insurance group. This requirement has been found to be unmanageable and not in place in any other state. The prohibition against use of prior carrier type will remain in the regulation.

§ 3.6(F) – Adds a section with regard to coding or reporting of chargeable and nonchargeable losses and requires prompt notification and premium adjustment when the coding is determined to be incorrect.

§ 3.8(A)(12) – Adds the requirements of R.I. Gen. Laws § 45-19-17 to the list of accidents that will not be deemed chargeable.

**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](mailto: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 FUTURE 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](mailto: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-20-05-3 as follows:

230-RICR-20-05-3

## TITLE 230 – DEPARTMENT OF BUSINESS REGULATION

### CHAPTER 20 – INSURANCE

#### SUBCHAPTER 05 – PERSONAL LINES – AUTOMOBILE AND HOMEOWNERS INSURANCE

##### PART 3 - Automobile Insurance Rating

### 3.1 Authority

This Regulation Part is promulgated in accordance with authority granted by R.I. Gen. Laws §§ 27-9-1 *et seq.*, and R.I. Gen. Laws §§ 27-9-7.2, 27-9-56, 31-47-18 and 42-14-17 45-19-17.

### 3.2 Purpose

The purpose of this Regulation Part is to set forth rules and procedural requirements to carry out the provisions of a uniform minimum guideline for ~~motor vehicle~~ private passenger automobile insurance in this state.

### 3.3 Definitions

A. As used in this Regulation Part:

1. "Alarm only device" means a device which sounds an audible alarm that can be heard at a distance of at least three hundred (300) feet for a minimum of three (3) minutes.
2. "Active disabling device" means a device which disables the vehicle by making the fuel, ignition or starting system inoperative and a separate manual step is required to engage the device.
3. "Chargeable accident" means any motor vehicle accident other than those set forth in § 3.8 of this Part.
4. "Department" means the Department of Business Regulation, Insurance Division.
5. "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. "Insurer" means all persons, firms, corporations or associations authorized or licensed to offer automobile insurance in this State.
7. "Moving violation" means any violation of statute or ordinance which requires operation of a motor vehicle as an element of the offense, and which occurred no more than three (3) years prior to the **annual** effective date of the policy.
8. "Passive disabling device" means a device which disables the vehicle by making the fuel, ignition or starting system inoperative and a separate manual step is not required to engage the device.
9. "Private passenger automobile" means any vehicle insured by a personal automobile insurance policy.
10. "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. For purposes of this Regulation 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.~~
11. "Vehicle recovery system service" means an electronic unit installed in a vehicle that is activated after the vehicle is stolen. When activated, the device provides information to law enforcement officials or another public or private entity regarding the vehicle's location. The system provides for the routine delivery of the information to the appropriate law enforcement entity to assist in the recovery of the vehicle.

### **3.4 Scope**

This **Regulation Part** shall apply to all private passenger automobile insurance rates filed with the Department on behalf of insurers seeking to satisfy the requirements of R.I. Gen. Laws **§§ Chapter 27-9-1 et seq.** and **R.I. Gen. Laws § 31-47-18.**

### **3.5 Additive Amounts for Policy Assessment**

Insurers shall develop and have approved for use within the State of Rhode Island programs showing an additive amount for assessment(s) to individual(s) as the result of a Chargeable Accident(s) and/or Moving Violation(s), as defined

in this [Regulation Part](#) without regard to age, sex or where the motor vehicle is garaged. These additive amounts must be clearly shown as a flat dollar rate or as a percentage rate in the insurers' rate manual and may vary by coverage, liability limits, age and price of car, physical damage deductible, etc. The additive amount must be reasonable, not excessive, or unfairly discriminatory, however, as long as the program meets these criteria, an additive amount is not required to be assessed for every Chargeable Accident or Moving Violation.

### 3.6 Reductive Amounts for Policy Credits

Insurers shall develop and have approved for use within the State of Rhode Island programs showing a reductive amount for credit(s) as a result of a lack of Chargeable Accident(s) and/or Moving Violations, as defined in this Part without regard to age, sex or where the motor vehicle is garaged. Insurers may restrict these reductive amounts only to persons who have been licensed for three (3) or more years. These reductive amounts must be clearly shown as a flat dollar rate or as a percentage rate in the insurers' rate manual and may vary by coverage, liability limits, age and price of car, physical damage deductible, etc. However, the reductive amount must be reasonable, not excessive, nor unfairly discriminatory. If the reductive amount meets these criteria an insurer may also have a discount program based upon tenure with the insurer. Nothing in this section affects an insurer's ability to provide non-driving related discounts that are not related to any accident or moving violation.

### 3.7 Premium Surcharges

- A. No insurer shall charge a higher premium as a result of any loss for which a surcharge is prohibited by R.I. Gen. Laws §§ 27-9-4 and 27-9-53 or § 3.8 of this Part. ~~Insurers must offer each insured the lowest premium for which that insured qualifies, within the insurer or group, at policy issuance and annual renewal.~~ No insurer shall use a prior carrier type (i.e. standard, non-standard or preferred) for the placement of an insured into a tier or company or use for discount/surcharge programs.
- B. No insurer may establish a premium surcharge or penalty, remove a discount, decline an award of credits, tier or retier, or place an insured with a member insurer or otherwise alter premium for any loss(es) other than a Chargeable Accident or Moving Violation. Insurers may not establish "loss free discounts" or "tiers" which take into account losses which are not Chargeable Accident(s) or Moving Violation(s) as defined in this [Regulation Part](#), and/or which occurred more than three (3) years prior to the ~~annual~~ effective date of the policy.
- C. No insurer may charge an increased premium (including an increase in premium which occurs by moving the insured into or out of a "tier") or eliminate a discount solely as a result of an insured being sixty-five (65) years or older, as prohibited by R.I. Gen. Laws § 27-9-4(a)(5).

- D. Any premium increases for a permitted purpose shall be instituted only at renewal of the policy. This does not apply to alterations of the underlying risk, in which case the premium may be altered but only to account for the alteration of the risk.
- E. An insurance policy is not subject to a surcharge solely because of the filing of a certificate of financial responsibility with the Rhode Island Division of Motor Vehicles on behalf of a minor because (s)he is a minor.
- F. Insurers shall notify the insured if a loss has affected the premium charged to the insured including how the insurer determined that the loss was chargeable.
- G. Insurers shall have procedures to assure that information regarding losses as chargeable or nonchargeable is correct. If an insurer determines that coding or reporting of a loss as chargeable or nonchargeable is incorrect, the insurer shall promptly notify all to whom that information has been previously transmitted and shall adjust premium for all affected insureds whether or not the policy has terminated.

### **3.8 Chargeable Accident**

- A. An accident will not be deemed chargeable against an individual who can show one of the following:
  - 1. The accident occurred more than three (3) years prior to the effective date of the policy;
  - 2. The property damage claim payment made as a result of the accident was less than one thousand five hundred dollars (\$1,500);
  - 3. The automobile involved in the motor vehicle accident was legally parked and unattended at the time of the damage;
  - 4. The insured covered by that policy is fifty percent (50%) or less at fault;
  - 5. The owner or operator has received at least fifty percent (50%) reimbursement from the other driver involved in the automobile accident;
  - 6. The individual has received a judgment in a court of law against the other owner or operator involved in the accident for at least fifty percent (50%) of the loss incurred;
  - 7. There has been a determination by a law enforcement agency that the damage inflicted on the owned or operated vehicle was done by an individual operating a stolen vehicle whether or not that individual was apprehended;

8. The operator or owner of the other vehicle involved in the automobile accident with the insured vehicle has had his license and/or registration suspended by action of the Division of Motor Vehicles for failing to satisfy financial responsibility requirements;
9. The loss or incident involved a bus driver, while in the course of his or her employment for the Rhode Island Public Transit Authority or private or municipal school bus companies;
10. The loss involved a law enforcement officer, while in the course of his or her employment for the state, city, or town police departments; ~~or~~
11. The loss or incident involved a commercial vehicle driver, defined as the driver of a motor vehicle with a gross weight in excess of ten thousand (10,000) pounds or a motor vehicle used for public livery, while in the course of his or her employment, or
12. The loss or incident involved the operator of an emergency vehicle falling within the scope of R.I. Gen. Laws § 45-19-17.

### **3.9 Reductions for Anti-Theft Devices**

- A. Every insurer, insuring motor vehicles which contain anti-theft devices, shall offer the following minimum reductions in premium charges on comprehensive coverage:
  1. Alarm Only Device— five percent (5%) -- Category 1
  2. Active Disabling Device – five percent (5%) -- Category 2
  3. Passive Disabling Device – fifteen percent (15%) -- Category 3
  4. Vehicle Recovery System Device – twenty five percent (25%) -- Category 4
- B. If an insured has more than one anti-theft device, the amount of the discount shall be as follows:
  1. One Category 4 device and one Category 1 device – thirty percent (30%)
  2. One Category 4 device and one Category 2 device – thirty percent (30%)
  3. One Category 4 device and one Category 3 device – thirty five percent (35%)
- C. Every insurer may require evidence of installation of any anti-theft device prior to application of the applicable discount.



- D. An insurer may provide a discount for any other anti-theft device that provides an actuarially supported reduction of risk.

### **3.10 Minimum Liability Coverage Limits**

Every owner's policy of liability insurance shall provide against loss from the liability imposed by law for damages, including damages for care and loss of services, because of bodily injury to or death of any person and injury to or destruction of property arising out of the ownership, maintenance, use, or operation of a specific motor vehicle or motor vehicles within the State of Rhode Island or elsewhere in the United States, in North America, or the Dominion of Canada, subject to a limit, exclusive of interest and costs, with respect to each such motor vehicle of Twenty-Five Thousand Dollars (\$25,000) because of bodily injury to or death of one (1) person in any one (1) accident, and subject to said limit for one (1) person, to a limit of Fifty Thousand Dollars (\$50,000) because of bodily injury to or death of two (2) or more persons in any one (1) accident, and a limit of Twenty-Five Thousand Dollars (\$25,000) because of injury to or destruction of property of others in any one (1) accident, or Seventy-Five Thousand Dollars (\$75,000) combined single limit.

### **3.11 Duration of Assessments**

The additive assessments resulting from the adoption of this ~~regulation~~ Part shall be included on new and renewal policies issued by insurers doing business in the State of Rhode Island for a maximum of three (3) policy years (using the anniversary date of the original coverage as the starting point of such experience measuring period) following the date of accident, conviction, pleading or a suspension of license.

### **3.12 Appeal**

Any dispute as to the applicability of assessments shall be governed in accordance with the Division of Motor Vehicles requirement for listing of accidents or convictions with the burden of proof resting upon the owner or operator of the insured vehicle to show that (s)he falls within one of the above mentioned exceptions

### **3.13 Use of Insurance Score in Rating or Underwriting**

- A. No insurer is required to use an Insurance Score in rating any insurance policy. If an insurer chooses to utilize Insurance Scores in insurance rating, where applicable statutes allow such use, the insurer must, in addition to the requirements of R.I. Gen. Laws § 27-9-56, comply with the following:
1. Demonstrate the statistically predictive nature of the Insurance Score utilized in conjunction with its rate filing

2. 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.
3. If the insurer chooses to use an Insurance Score it may do so only in accordance with R.I. Gen. Laws § 27-9-56 and this [Regulation Part](#) and may do so only upon initiation or renewal of the policy.
4. If the use of an Insurance Score increases the insured’s rate in any manner, including making the insured ineligible for a “tier”, the insurer shall explain, in writing sent to the insured, all information required by the Federal Fair Credit Reporting Act and the insured’s rights pursuant to R.I. Gen. Laws § 27-9-56 (a)(2).
5. If requested by the insured, pursuant to R.I. Gen. Laws § 27-9-56(a)(2), the insurer must obtain an updated Insurance Score once every two (2) years unless the insured is in the most favorably priced tier of the insurer or group or [credit insurance](#) score was not used for the insured when the policy was initially written. If required by R.I. Gen. Laws § 27-9-56(a)(2), once the updated Insurance Score is obtained the insurer shall:
  - a. Provide a decreased premium to the insured at renewal, if the updated Insurance Score indicates that the insured is entitled to a decrease in premium.
  - b. If the updated Insurance Score indicates that the insured may be charged an increased premium, the insurer may only increase the premium at renewal due to the Insurance Score if:
    - (1) The worsening is due to a bankruptcy, tax lien, garnishment, foreclosure or judgment; or
    - (2) A subsequent Insurance Score undertaken no sooner than six (6) months later confirms the worsening in score.
6. 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, adjust the premium on the policy by refunding the amount of the overpayment based on the corrected insurance score retroactive to the shorter of the last twelve (12) months of coverage or the actual period of coverage.

### 3.14 Severability

If any provision of this Part or the application thereof to any person or circumstances is held invalid or unconstitutional, the invalidity or

unconstitutionality shall not affect other provisions or applications of this Part which can be given effect without the invalid or unconstitutional provision or application, and to this end the provisions of this Part are severable.