

State of Rhode Island and Providence Plantations
DEPARTMENT OF BUSINESS REGULATION
Division of Insurance
1511 Pontiac Avenue, Bldg. 69-2
Cranston, Rhode Island 02920

Public Notice of Proposed Rule-Making

Pursuant to the provisions of R.I. Gen. Laws § 27-9-1 *et seq.*, and 31-47-18 and in accordance with the Administrative Procedures Act Chapter 42-35 of the General Laws, the Department of Business Regulation hereby gives notice of its intent to amend Insurance Regulation 25 – Automobile Insurance Rating.

The purpose of this amendment is to effectuate statutory amendments to 27-9-4 and clarify to which policies the increase threshold is to be applied. In addition the proposed amendments clarify the types of insurance to which the regulation is applicable, acknowledge and allow for six (6) month insurance policies and removes accidents in which the other party is not insured from the exclusion of chargeable accidents.

The proposed amended regulation and concise summary of non-technical amendments are available for public inspection at www.dbr.ri.gov , in person at Department of Business Regulation, 1511 Pontiac Avenue, Cranston, Rhode Island 02920, or requested by email edwyer@dbr.state.ri.us or by calling Elizabeth Kelleher Dwyer at (401) 462 9520.

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.

All interested parties are invited to submit written or oral comments concerning the proposed regulations by October 21, 2009 at 11:00 am to Elizabeth Kelleher Dwyer, Department of Business Regulation, 1151 Pontiac Avenue, Cranston, Rhode Island 02920, edwyer@dbr.state.ri.us. A public hearing to consider the proposed amendment shall be held on October 21, 2009 at 11:00 am at 1511 Pontiac Avenue, Cranston, Rhode Island 02920 at which time and place all persons interested therein will be heard. The room is accessible to the disabled and interpreter services for the hearing impaired will be provided if requested 48 hours prior to the hearing. Requests for this service can be made in writing or by calling (401) 462 9520 or TDD 711.

A. Michael Marques
Director, Department of Business Regulation

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Concise Summary of Proposed Non-technical Amendments
to
Insurance Regulation Number 25

In accordance with the Administrative Procedures Act, Section 42-35-3(a)(1) of the General Laws of Rhode Island, following is a concise summary of proposed non-technical amendments:

1. Section 3 adds a definition for motor vehicle insurance and commercial insurance and expands on the definition of private passenger automobile. Language which had caused concern with regard to six (6) month insurance policies was removed from the definition of “renewal”.
2. Section 4 is rewritten to indicate the applicability of various portions of the regulation.
3. Section 7 adds the statutory requirement that R.I. Gen. Laws § 27-9-4(a)(5) is applicable only to private passenger automobile insurance.
4. Section 8 amends the damage threshold in accordance with the amendment to R.I. Gen. Laws § 27-9-4, removes section (h) and adds specification to those areas applicable only to private passenger automobile insurance.
5. Section 11 is amended to provide clarity that it is applicable only to private passenger automobile insurance.
6. Section 13 clarifies the effective date of amendments to Section 8 regarding the damage threshold

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INSURANCE REGULATION 25

AUTOMOBILE INSURANCE RATING

Table of Contents

Section 1	Authority
Section 2	Purpose
Section 3	Definitions
Section 4	Scope
Section 5	Additive Amounts for Policy Assessments
Section 6	Reductive Amounts for Policy Credits
Section 7	Premium Surcharges
Section 8	Chargeable Accident
Section 9	Duration of Assessments
Section 10	Appeal
Section 11	Use of Insurance Score in Rating or Underwriting
Section 12	Severability
Section 13	Effective Date

Section 1 *Authority*

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

Section 2 *Purpose*

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

Section 3 *Definitions*

As used in this Regulation:

- A. “Chargeable Accident” shall mean any motor vehicle accident other than those set forth in Section 8 of this Regulation.

- B. “Commercial Automobile Insurance” shall mean motor vehicle insurance that includes vehicles that are used primarily in connection with business, commercial establishments, activity, employment, or activities carried on for gain or profit.
- BC. "Company" shall mean an insurance company, corporation or other entity authorized to transact insurance business in this State.
- CD. "Department" shall mean the Department of Business Regulation.
- DE. “Insurance Commissioner” shall mean the Director of the Department of Business Regulation or his or her designee.
- EF. “Insurance Score” shall mean 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.
- G. “Motor Vehicle Insurance” shall mean those lines of business classified as either auto liability or auto physical damage on the National Association of Insurance Commissioners Property and Casualty Lines of Business appendix to the annual statement instructions.
- FH. “Moving Violation” shall mean 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 time the policy is issued or renewed.
- GI. “Private Passenger Automobile Insurance” shall mean any-motor vehicle insurance covering motor vehicles used primarily for personal or family use under insured by a personal automobile insurance policy.
- FJ. "Renewal" or "to renew" shall mean 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 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.

Section 4 *Scope*

This Regulation shall apply to all ~~private passenger motor vehicle~~ automobile insurance rates filed with the Department on behalf of companies seeking to satisfy the requirements of R.I. Gen. Laws §§ 27-9-1 *et seq* and 31-47-18 unless the section is noted to apply only to private passenger automobile or commercial automobile insurance in which case the section shall only apply to the type of insurance indicated.

Section 5 *Additive amounts for policy assessment*

Companies 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 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. However, the additive amount must be reasonable, not excessive, nor unfairly discriminatory.

Section 6 *Reductive amounts for policy credits*

Companies shall develop and have approved for use within the State of Rhode Island programs showing a reductive amount for credit(s) to individual(s) as a result of their lack of Chargeable Accident(s) and/or Moving Violations, as defined in this Regulation without regard to age, sex or where the motor vehicle is garaged. 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. 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.

Section 7 *Premium Surcharges*

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 section 8 of this regulation. Insurers must offer each insured the lowest premium for which that insured qualifies, within the insurer or group, at policy issuance and at least at 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.

No insurer may establish a premium surcharge or penalty, remove a discount, decline an award of credits, tier or retier, or place insured with a member company 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, and/or which occurred more than three (3) years prior to the time the policy is issued or renewed.

With regard to private passenger automobile insurance policies, 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).

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.

Section 8 *Chargeable Accident*

An accident will not be deemed chargeable against an individual who can show one of the following:

- (a) the accident occurred more than three (3) years prior to the time the policy is issued or renewed;
- (b) the property damage claim payment made as a result of the accident was less than one thousand five hundred dollars (\$1,0500);
- (c) the automobile involved in the motor vehicle accident was legally parked and unattended at the time of the damage;
- (d) the insured covered by that policy is fifty percent (50%) or less at fault;
- (e) the owner or operator has received at least fifty percent (50%) reimbursement from the other driver involved in the automobile accident;
- (f) 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;
- (g) 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;
- ~~(h) the other operator or owner of the vehicle involved in the automobile accident with the insured vehicle has had his license and/or registration suspended by action of the Registry of Motor Vehicles for failing to satisfy financial responsibility requirements;~~

- (h) with regard to private passenger automobile insurance policies only, 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;
- (j) with regard to private passenger automobile insurance policies only, 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
- (k) with regard to private passenger automobile insurance policies only, 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.

Section 9 *Duration of Assessments*

The additive assessments resulting from the adoption of this regulation shall be included on new and renewal policies issued by companies 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 or a period not to exceed forty five (45) days in advance of such time) following the date of accident, conviction, pleading or a suspension of license.

Section 10 *Appeal*

Any dispute as to the applicability of assessments shall be governed in accordance with the Registry 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 he falls within one of the above mentioned exceptions.

Section 11 *Use of Insurance Score in Rating or Underwriting*

No insurer is required to use an Insurance Score in rating any insurance policy. With regard to private passenger automobile insurance policies only, 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 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 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:
 - i. the worsening is due to a bankruptcy, tax lien, garnishment, foreclosure or judgment; or
 - ii. a subsequent Insurance Score undertaken no sooner than six (6) months later confirms the worsening in score.

Section 12 **Severability**

If any provision of this Regulation 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 Regulation which can be given effect without the invalid or unconstitutional provision or application, and to this end the provisions of this Regulation are severable.

Section 13 **Effective Date**

This Regulation shall be effective as indicated below. The increased threshold in Section 8(b) applies to accidents that occur on or after January 1, 2010 and to policies issued or renewed on or after January 1, 2010 regardless of when the renewal is processed.

EFFECTIVE DATE: January 1, 1979
CORRECTIONS: March 5, 1979
AMENDED: July 1, 1992
February 17, 1997
REFILED: December 19, 2001
AMENDED: May 9, 2005
AMENDED: January 11, 2006
AMENDED: March 11, 2008
AMENDED: January 1, 2010