

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 91

Session of
1997

INTRODUCED BY HOLL, JANUARY 21, 1997

REFERRED TO BANKING AND INSURANCE, JANUARY 21, 1997

AN ACT

1 Amending the act of June 5, 1968 (P.L.140, No.78), entitled "An
2 act regulating the writing, cancellation of or refusal to
3 renew policies of automobile insurance; and imposing powers
4 and duties on the Insurance Commissioner therefor," further
5 providing for cancellation or refusal to renew and for review
6 procedures and policy termination.

7 The General Assembly of the Commonwealth of Pennsylvania
8 hereby enacts as follows:

9 Section 1. Section 5(1) of the act of June 5, 1968 (P.L.140,
10 No.78), entitled "An act regulating the writing, cancellation of
11 or refusal to renew policies of automobile insurance; and
12 imposing powers and duties on the Insurance Commissioner
13 therefor," amended July 14, 1988 (P.L.546, No.97), is amended to
14 read:

15 Section 5. No cancellation or refusal to renew by an insurer
16 of a policy of automobile insurance shall be effective unless
17 the insurer shall deliver or mail, to the named insured at the
18 address shown in the policy a written notice of the cancellation
19 or refusal to renew. Such notice shall:

(1) Be [approved as to form by the Insurance Commissioner prior to use] in a form acceptable to the Insurance Commissioner;

* * *

Section 2. Sections 8 and 9 of the act, amended October 5, 1978 (P.L.1060, No.248), are amended to read:

Section 8. (a) Any insured may within [twenty] thirty days of the receipt by the insured of notice of cancellation or notice of intention not to renew, and of the receipt of the reason or reasons for the cancellation or refusal to renew as stated in the notice, request in writing to the Insurance Commissioner that [he] the commissioner review the action of the insurer in cancelling or refusing to renew the policy of such insured.

(b) Any applicant for a policy who is refused such policy by an insurer shall be given a written notice of refusal to write by the insurer. Such notice shall state the specific reason or reasons of the insurer for refusal to write a policy for the applicant. Within [twenty] thirty days of the receipt of such reasons, the applicant may request in writing to the Insurance Commissioner that [he] the commissioner review the action of the insurer in refusing to write a policy for the applicant.

Section 9. (a) On receipt of a request for review [or if as a result of investigation, the Insurance Commissioner has good cause to believe that an insurer is violating the act], the Insurance Commissioner [or his designated representative] shall notify the insurer [thereof and shall] that a review has been requested. The commissioner shall review the matter to determine whether the cancellation or refusal to renew or to write was in violation of this act, and shall within forty days of the

1 receipt of such request either order the policy written or
2 reinstated or uphold the cancellation or refusal to renew. [If
3 either of the parties shall dispute the commissioner's findings,
4 such party shall have the right to a formal hearing. In the
5 event a hearing is requested, the commissioner shall immediately
6 issue notice of said hearing which shall state the time and
7 place for hearing which shall not be less than thirty days from
8 the date of the notice.]

9 (b) [At the time and place fixed for the hearing in the
10 notice, the parties shall have an opportunity to be heard and to
11 show cause why an order should not be made by the commissioner
12 to cease and desist from acts constituting a violation of this
13 act.] After a review of a cancellation of or refusal to renew a
14 policy, if the commissioner finds the insurer not to be in
15 violation of this act, the policy shall remain in effect until
16 the date referred to in clause (2) of section 5, or thirty days
17 following the conclusion of the review provided for in
18 subsection (a), whichever is later. Provided, however, for
19 review of cancellations under clause (1) of section 4, the
20 policy shall terminate as of the date provided in the notice
21 under clause (2) of section 5 unless the policy is reinstated.
22 Nothing in this subsection shall be construed to prevent the
23 insurer, at its discretion, from continuing coverage after the
24 initial review period until such time as the commissioner has
25 issued a final order.

26 (c) [Upon good cause shown, the commissioner shall permit
27 any person to intervene, appear and be heard at the hearing, in
28 person or by counsel.] After review of a cancellation of or
29 refusal to renew a policy, if the commissioner finds the insurer
30 to be in violation of this act, and the insurer requests a

1 hearing pursuant to subsection (d), the policy shall remain in
2 effect until such time as the commissioner has issued a final
3 order.

4 (d) [The commissioner may administer oaths, examine and
5 cross-examine witnesses, receive oral and documentary evidence
6 and subpoena witnesses, compel their attendance and require the
7 production of books, papers, records, or other documents which
8 he deems relevant to the hearing. The commissioner shall cause a
9 record to be kept of all evidence and all proceedings at the
10 hearing.] If either of the parties shall dispute the
11 commissioner's findings, that party shall have the right to a
12 formal hearing. In the event a hearing is requested, the
13 commissioner shall issue notice of the hearing, which shall
14 state the time and place for the hearing which shall not be less
15 than thirty days from the date of notice.

16 (e) [Following the hearing, the commissioner shall issue a
17 written order resolving the factual issues presented at the
18 hearing and stating what remedial action, if any, is required.
19 The commissioner shall send a copy of the order to the persons
20 participating in the hearing. In the case of a cancellation of
21 or refusal to renew a policy, said policy shall remain in effect
22 until the conclusion of such review or the date referred to in
23 clause (2) of section 5, whichever is later, except for review
24 of cancellations under clause (1) of section 4 in which case the
25 policy shall terminate as of the date provided in the notice
26 under clause (2) of section 5 unless the cancellation or refusal
27 to renew is upheld or the policy reinstated.] At the time and
28 place fixed for the hearing in the notice, the parties shall
29 have an opportunity to be heard.

30 (f) Upon good cause shown, the commissioner shall permit any

person to intervene, appear and be heard at the hearing, in person or by counsel.

(g) The commissioner may administer oaths, examine and cross-examine witnesses, receive oral and documentary evidence and subpoena witnesses, compel their attendance and require the production of books, papers, records or other documents which he deems relevant to the hearing. The commissioner shall cause a record to be kept of all evidence and all proceedings at the hearings.

(h) The insurer shall bear the burden at the hearing to prove that the cancellation or refusal to renew complies with this act. However, if the insured requested the hearing, and fails to appear at the time and place for the hearing, the commissioner may consider a motion to dismiss and shall not be compelled to take evidence at the scheduled hearing. In addition to any remedy in subsection (i), the commissioner shall have the authority to order an insurer to cease and desist from acts constituting a violation of this act.

(i) Following the hearing, the commissioner shall issue a written order resolving the factual issues presented at the hearing and stating what remedial action, if any, is required. If the commissioner finds that the cancellation or refusal to renew violates this act, then the remedial action ordered by the commissioner shall include at least one of the following:

(1) That the insurer reimburse the insured for any increase in the cost of insurance and any short-term cancellation fees which are incurred.

(2) That the insurer reinstate the original policy prospectively.

(3) That if an insurer has elected to continue coverage

1 pursuant to subsection (b), the coverage shall remain in full
2 force and effect under the terms of the policy.
3 Reimbursement shall be in the amount incurred by the insured to
4 secure replacement coverage during the pendency of the hearing
5 process, which cost exceeds the cost which would have been
6 incurred had the policy under review remained in effect. The
7 reimbursement shall be based on the difference of the cost of
8 the policies to the extent that the coverage and limits of the
9 replacement coverage does not exceed the original coverage. The
10 insured shall bear the burden to request reimbursement and prove
11 any increase in the cost of insurance. In addition, if a
12 prospective reinstatement of the original policy is ordered,
13 then the reinstatement shall take effect on the next policy
14 anniversary date, unless the insured requests that the
15 reinstatement take effect at an earlier date.

16 (j) The commissioner shall send a copy of the order to the
17 parties participating in the hearing.

18 (k) All of the actions which may be performed by the
19 commissioner in this section may be performed by the
20 commissioner's designated representative.

21 Section 3. This act shall take effect in 60 days.