

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 853 Session of
2003

INTRODUCED BY GREENLEAF, TARTAGLIONE, M. WHITE, KUKOVICH,
RAFFERTY, BOSCOLA, KITCHEN, KASUNIC AND STACK, JULY 8, 2003

REFERRED TO BANKING AND INSURANCE, JULY 8, 2003

AN ACT

1 Amending the act of May 17, 1921 (P.L.682, No.284), entitled "An
2 act relating to insurance; amending, revising, and
3 consolidating the law providing for the incorporation of
4 insurance companies, and the regulation, supervision, and
5 protection of home and foreign insurance companies, Lloyds
6 associations, reciprocal and inter-insurance exchanges, and
7 fire insurance rating bureaus, and the regulation and
8 supervision of insurance carried by such companies,
9 associations, and exchanges, including insurance carried by
10 the State Workmen's Insurance Fund; providing penalties; and
11 repealing existing laws," defining "at-fault"; further
12 providing for cancellation of or refusal to renew policies;
13 providing for notification of at-fault; and further providing
14 for request for review, for review procedure and for
15 information and report.

16 The General Assembly of the Commonwealth of Pennsylvania
17 hereby enacts as follows:

18 Section 1. Section 2001 of the act of May 17, 1921 (P.L.682,
19 No.284), known as The Insurance Company Law of 1921, is amended
20 by adding a definition to read:

21 Section 2001. Definitions.--As used in this article, the
22 following words and phrases shall have the meanings given to
23 them in this section:

24 "At-fault." In reference to an accident, this term means one

1 where the insured was at fault in causing or contributing to the
2 accident and the claim resulting from that accident was paid in
3 part or in whole by the insurer.

4 * * *

5 Section 2. Section 2003 of the act is amended by adding a
6 subsection to read:

7 Section 2003. Discrimination Prohibited.--* * *

8 (b.1) (1) An insurer may not cancel or refuse to renew or
9 increase the premiums for a policy of automobile insurance under
10 which more than one person is insured because of the claims
11 experience or driving record of one or more, but less than all,
12 of the persons insured under the policy. The insurer shall, in
13 lieu of cancellation, nonrenewal or premium increase, offer to
14 continue or renew the insurance, and may exclude from coverage,
15 by name, the person or persons whose claim experience or driving
16 record would have justified the cancellation or nonrenewal. A
17 named insured may exclude from coverage the person or persons
18 whose claim experience or driving record would have justified
19 the cancellation or nonrenewal if the excluded person or persons
20 are insured on another policy of automobile insurance. All
21 insurers and the assigned risk plan shall provide the exclusion
22 requested by the named insured upon proof of financial
23 responsibility for the excluded person.

24 (2) The premiums charged for any such policy excluding a
25 named driver or drivers may not reflect the claims experience or
26 driving record of the excluded named driver or drivers. With
27 respect to any person excluded from coverage, the policy may
28 provide that the insurer shall not be liable for damages, losses
29 or claims arising out of the operation or use of the insured
30 motor vehicle, if such operation or use was with the permission

1 of a person insured under the policy.

2 * * *

3 Section 3. The act is amended by adding a section to read:

4 Section 2006.1. Notification of At-fault.--If an insurer
5 makes a determination of at-fault in an accident, the insurer
6 shall inform the named insured within fifteen (15) days of the
7 determination and shall specify the manner in which
8 determination of at-fault was made. The department shall approve
9 the forms of notice of at-fault determination.

10 Section 4. Sections 2008, 2009 and 2012 of the act, added
11 June 17, 1998 (P.L.464, No.68), are amended to read:

12 Section 2008. Request for Review.--(a) Any insured may,
13 within thirty (30) days of the receipt by the insured of notice
14 of at-fault determination, notice of cancellation or notice of
15 intention not to renew and of the receipt of the reason or
16 reasons for the at-fault determination, cancellation or refusal
17 to renew as stated in the notice, request in writing to the
18 Insurance Commissioner that the Insurance Commissioner review
19 the action of the insurer in assessing fault, cancelling or
20 refusing to renew the policy of such insured.

21 (b) Any applicant for a policy who is refused a policy by an
22 insurer shall be given a written notice of refusal to write by
23 the insurer. The notice shall state the specific reason or
24 reasons of the insurer for refusal to write a policy for the
25 applicant. Within thirty (30) days of the receipt of such
26 reasons, the applicant may request in writing to the Insurance
27 Commissioner that the Insurance Commissioner review the action
28 of the insurer in refusing to write a policy for the applicant.

29 Section 2009. Review Procedure.--(a) On receipt of a
30 request for review, the Insurance Commissioner shall notify the

insurer that a review has been requested. The Insurance Commissioner shall review the matter to determine whether the at-fault determination was properly assessed or whether the cancellation or refusal to renew or to write was in violation of this article and shall, within forty (40) days of the receipt of such request, either order the modification of the determination of at-fault, or order the policy written or reinstated or uphold the determination of at-fault, cancellation or refusal to renew.

(b) After a review of [a] an at-fault determination, cancellation of or refusal to renew a policy, if the Insurance Commissioner finds the insurer not to have improperly assessed fault in an automobile accident, be in violation of this article, the at-fault determination shall stand, the policy shall remain in effect until the date referred to in section 2006(2) or thirty (30) days following the conclusion of the review provided for in subsection (a), whichever is later. Provided, however, for review of cancellations under section 2004(1), the policy shall terminate as of the date provided in the notice under section 2006(2) unless the policy is reinstated. Nothing in this subsection shall be construed to prevent the insurer, at its discretion, from continuing coverage after the initial review period until such time as the Insurance Commissioner has issued a final order.

(c) After review of [a] an at-fault determination, cancellation of or refusal to renew a policy, if the Insurance Commissioner finds the insurer [to be] improperly assessed fault in an automobile accident, or in violation of this article and the insurer requests a hearing pursuant to subsection (d), the policy of insurance shall not be subject to any increase in premium rates or the policy shall remain in effect until such

1 time as the Insurance Commissioner has issued a final order.

2 (d) If either of the parties shall dispute the Insurance
3 Commissioner's findings, that party shall have the right to a
4 formal hearing. In the event a hearing is requested, the
5 Insurance Commissioner shall issue notice of the hearing which
6 shall state the time and place for the hearing, which shall not
7 be less than thirty (30) days from the date of notice.

8 (e) At the time and place fixed for the hearing in the
9 notice, the parties shall have an opportunity to be heard.

10 (f) Upon good cause shown, the Insurance Commissioner shall
11 permit any person to intervene, appear and be heard at the
12 hearing in person or by counsel.

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

20 (h) The insurer shall bear the burden at the hearing to
21 prove that the at-fault determination, cancellation or refusal
22 to renew complies with this article. However, if the insured
23 requested the hearing and fails to appear at the time and place
24 for the hearing, the Insurance Commissioner may consider a
25 motion to dismiss and shall not be compelled to take evidence at
26 the scheduled hearing. In addition to any remedy in subsection
27 (i), the Insurance Commissioner shall have the authority to
28 order an insurer to cease and desist from acts constituting a
29 violation of this article.

30 (i) Following the hearing, the Insurance Commissioner shall

1 issue a written order resolving the factual issues presented at
2 the hearing and stating what remedial action, if any, is
3 required. If the Insurance Commissioner finds that the at-fault
4 determination, cancellation or refusal to renew was improper or
5 violates this article, then the remedial action ordered by the
6 Insurance Commissioner shall include at least one of the
7 following:

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

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

13 (3) That if an insurer has elected to continue coverage
14 pursuant to subsection (b), the coverage shall remain in full
15 force and effect under the terms of the policy. Reimbursement
16 shall be in the amount incurred by the insured to secure
17 replacement coverage during the pendency of the hearing process,
18 which cost exceeds the cost which would have been incurred had
19 the policy under review remained in effect. The reimbursement
20 shall be based on the difference of the cost of the policies to
21 the extent that the coverage and limits of the replacement
22 coverage does not exceed the original coverage. The insured
23 shall bear the burden to request reimbursement and prove any
24 increase in the cost of insurance. In addition, if a prospective
25 reinstatement of the original policy is ordered, then the
26 reinstatement shall take effect on the next policy anniversary
27 date unless the insured requests that the reinstatement take
28 effect at an earlier date.

29 (4) That the insurer may not increase the premium rate of an
30 owner of a policy of insurance.

1 (j) The Insurance Commissioner shall send a copy of the
2 order to the parties participating in the hearing.

3 (k) All of the actions which may be performed by the
4 Insurance Commissioner in this section may be performed by the
5 Insurance Commissioner's designated representative.

6 Section 2012. Information and Report.--Each insurer shall
7 maintain records of the numbers of at-fault determinations,
8 cancellations and refusals to write or renew policies and the
9 reasons therefor and shall supply this information to the
10 Insurance Commissioner upon his request.

11 Section 5. This act shall take effect in 60 days.