

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

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

9 (b) After a review of [a] an at-fault determination,  
10 cancellation of or refusal to renew a policy, if the Insurance  
11 Commissioner finds the insurer not to have improperly assessed  
12 fault in an automobile accident, be in violation of this  
13 article, the at-fault determination shall stand, the policy  
14 shall remain in effect until the date referred to in section  
15 2006(2) or thirty (30) days following the conclusion of the  
16 review provided for in subsection (a), whichever is later.  
17 Provided, however, for review of cancellations under section  
18 2004(1), the policy shall terminate as of the date provided in  
19 the notice under section 2006(2) unless the policy is  
20 reinstated. Nothing in this subsection shall be construed to  
21 prevent the insurer, at its discretion, from continuing coverage  
22 after the initial review period until such time as the Insurance  
23 Commissioner has issued a final order.

24 (c) After review of [a] an at-fault determination,  
25 cancellation of or refusal to renew a policy, if the Insurance  
26 Commissioner finds the insurer [to be] improperly assessed fault  
27 in an automobile accident, or in violation of this article and  
28 the insurer requests a hearing pursuant to subsection (d), the  
29 policy of insurance shall not be subject to any increase in  
30 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.