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To: Property and Casualty Insurers Writing Automobile Insurance

From: Ernst N. Csiszar
Director 

Subject: Automobile Insurance Cancellations

Questions have been received at the Department concerning automobile cancellation laws. This bulletin will address the issue of cancellation during the first 60 days of the policy period and when such cancellation may be effective.

Section 38-77-123(B) provides that no insurer may cancel a policy except for the following reasons: 1) the driver's license has been revoked or suspended or 2) nonpayment of premium. *See* S. C. Code Ann. §§ 38-77-123 (2002). Two additional sections of the South Carolina Code address cancellation of insurance policies within the first 3 months of the policy. *See* S. C. Code Ann. §§ 38-77-121, 56-10-280 (2002). Section 38-77-121(D) provides that an insurer may cancel without cause at any time in the first ninety days during which the policy is in effect subject to Section 38-77-122. Section 56-10-280 provides that the policy can be canceled within the first 60 day for nonpayment of the initial premium.

Moreover, § 56-10-280 provides:

(A) Contracts or policies of insurance issued to meet the financial responsibility requirements prescribed in this chapter must be issued for not less than six months. **A contract or policy of insurance remains in effect at least sixty days** notwithstanding a power of attorney which may purport to give the attorney-in-fact the right to effect cancellation on behalf of the insured. However, a contract or policy may be canceled within the first sixty days **only under one or more of the following circumstances** (emphasis added):

(1) a check or bank draft tendered by the insured for payment to an agent, an insurance company, or a premium finance company is returned unpaid for insufficient funds or other reason by the insured's financial institution. If the check or draft is an initial payment made by an applicant for insurance or a payment made by an insured to renew a policy, the cancellation is effective as of the policy inception or renewal date.

(2) the insured produces satisfactory proof from the department that he has sold or otherwise disposed of the insured vehicle or surrendered its tags and registration.

(3) the insured has secured another policy that meets the financial responsibility requirements prescribed in this chapter.

(B) This section does not prohibit refunds to the insured for cancellations after sixty days resulting from causes other than nonpayment of premium. Where an insurance company or premium finance company cancels a contract or policy pursuant to this section for nonpayment of premium under the circumstances in subsection (A) which occurs within the first sixty days, the insurance company, premium finance company, or agent may charge and collect a fifteen-dollar penalty in addition to that otherwise provided by law, and the penalty charge is not a premium charge.

“Underwriting reason” is not set forth within the statute as a ground for cancellation. Section 56-10-280 is a financial responsibility statute. It provides that a policy must stay in effect at least 60 days to meet financial responsibility requirements.

A policy may be canceled within the first 90 days for underwriting reasons in accordance with § 38-77-121(D). There appears to be a legitimate conflict between §§ 56-10-280 and 38-77-121(D). In determining the manner in which a statutory conflict is resolved the court in Feldman v. S.C. Tax Commission, 203 S.C. 49, 26 S.E. 2d 22 (1943) held “under the principle that the last expression of the legislative will is the law where conflicting provisions are found in the same statute, or in different statutes, the last in point of time or order of arrangement prevails.” The last legislative expression is § 56-10-280 which was amended July 20, 2001. Thus, a policy may be cancelled within the first 60 days only in accordance with the provisions set forth in § 56-10-280. However, due to the apparent conflict between §§ 56-10-280 and 38-77-121(D), the Department has construed these two statutes so as to give effect to both. “Statutes in apparent conflict should be construed, if possible, to allow both to stand and give effect to each.” Adoptive Parents v. Biological Parents, 315 S.C. 535, 446 S.E. 2d 404 (1994) Accordingly, a policy may be canceled within the first 60 days for underwriting reasons in accordance with §38-77-121(D), but that cancellation is not effective until the 61st day due to the 60-day financial responsibility requirement set forth in §56-10-280.

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