

No. 1978-248

AN ACT

SB 736

Amending the act of June 5, 1968 (P.L.140, No.78), entitled "An act regulating the writing, cancellation of or refusal to renew policies of automobile insurance; and imposing powers and duties on the Insurance Commissioner therefor," relating to the cancellation of automobile insurance policies and changing the penalties.

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

Section 1. Clause (1) of section 1, sections 3, 4, 5, 6, 7, 8, 9, 10 and subsection (a) of section 11 act of June 5, 1968 (P.L.140, No.78), entitled "An act regulating the writing, cancellation of or refusal to renew policies of automobile insurance; and imposing powers and duties on the Insurance Commissioner therefor," are amended and a section is added to read:

Section 1. As used in this act the following definitions shall apply:

(1) "Policy of automobile insurance" or "policy" means a policy delivered or issued for delivery in this Commonwealth insuring a natural person as named insured or one or more related individuals resident of the same household, and under which the insured vehicles therein designated are of the following types only: (i) a motor vehicle of the private passenger or station wagon type that is not used as a public or livery conveyance for passengers and is not rented to others; or (ii) any other four-wheel motor vehicle with a gross weight not exceeding nine thousand pounds which is not principally used in the occupation, profession or business of the insured other than **[the]** farming: Provided, however, That this act shall not apply to any policy issued under an automobile assigned risk plan, nor to any policy insuring more than four automobiles, nor to any policy covering garage, automobile sales agency repair shop, service station or public parking place operation hazards.

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Section 3. **[No insurer shall cancel or refuse to write or renew a policy of automobile insurance solely because of the age, residence, race, color, creed, national origin, ancestry or lawful occupation (including the military service) of anyone who is or seeks to become insured or solely because another insurer has refused to write a policy, or has cancelled or has refused to renew an existing policy in which that person was the named insured.]**

(a) No insurer shall cancel or refuse to write or renew a policy of automobile insurance for one or more of the following reasons:

(1) Age.

(2) Residence or operation of a motor vehicle in a specific geographic area.

- (3) Race.**
- (4) Color.**
- (5) Creed.**
- (6) National origin.**
- (7) Ancestry.**
- (8) Marital status.**
- (9) Sex.**
- (10) Lawful occupation (including military service).**
- (11) The refusal of another insurer to write a policy, or the cancellation or refusal to renew an existing policy by another insurer.**
- (12) Illness or permanent or temporary disability, where the insured can medically document that such illness or disability will not impair his ability to operate a motor vehicle. Failure to provide such documentation shall be proper reason for the insurer to amend the policy of the named insured to exclude such disabled insured from coverage under the policy while operating a motor vehicle after the effective date of such policy amendment, but shall not be proper reason to cancel or refuse to write or renew the policy. Nothing in this provision shall be construed to effect such excluded individual's eligibility for coverage under the named insured's policy for any injury sustained while not operating a motor vehicle. Illness, or permanent or temporary disability, on the part of any insured shall not be proper reason for cancelling the policy of the named insured.**
- (13) Any accident which occurred under the following circumstances:**
 - (i) auto lawfully parked (if the parked vehicle rolls from the parked position then any such accident is charged to the person who parked the auto);**
 - (ii) the applicant, owner or other resident operator is reimbursed by, or on behalf of, a person who is responsible for the accident or has judgement against such person;**
 - (iii) auto is struck in the rear by another vehicle and the applicant or other resident operator has not been convicted of a moving traffic violation in connection with this accident;**
 - (iv) operator of the other auto involved in the accident was convicted of a moving traffic violation and the applicant or resident operator was not convicted of a moving traffic violation in connection with the accident;**
 - (v) auto operated by the applicant or any resident operator is struck by a "hit-and-run" vehicle, if the accident is reported to the proper authority within twenty-four hours by the applicant or resident operator;**
 - (vi) accident involving damage by contact with animals or fowl;**
 - (vii) accident involving physical damage, limited to and caused by flying gravel, missiles, or falling objects;**
 - (viii) accident occurring when using auto in response to any emergency if the operator of the auto at the time of the accident was a paid or volunteer member of any police or fire department, first aid squad, or any law enforcement agency. This exception does not include an accident occurring after the auto ceases to be used in response to such emergency; or**

(ix) accidents which occurred more than thirty-six months prior to the later of the inception of the insurance policy or the upcoming anniversary date of the policy.

(14) Any claim under the comprehensive portion of the policy unless such loss was intentionally caused by the insured.

(b) No insurer shall cancel or refuse to renew a policy of automobile insurance on the basis of one accident within the thirty-six month period prior to the upcoming anniversary date of the policy.

(c) For a period twelve months after notice of termination given to an agent:

(1) An insurer shall not cancel or refuse to renew existing policies written through the terminated agent because of such termination except as provided in clause (2).

(2) An insurer may cancel or refuse to renew only such policies as could have been cancelled or nonrenewed had the agency relationship continued.

(3) An insurer shall be obligated to pay commissions for such policies that are continued or renewed through the terminated agent, except where:

(i) the insurer retained ownership of the expirations of such policies; or

(ii) the agent has misappropriated funds or property of the insurer or has failed to remit to the insurer funds due it promptly upon demand or has been terminated for insolvency, abandonment, gross and willful misconduct or has had his license suspended or revoked.

(d) Subsequent to the twelve-month period after notice of termination given to an agent, an insurer shall not cancel or refuse to renew existing policies written through the terminated agent without offering each such insured coverage on a direct basis or offering refer the insured to one or more new agents in the event the terminated agent could not find a suitable insurer acceptable to the policyholder for such business. Such offer need not be made if the insurer could have cancelled or nonrenewed the policy had the agency relationship continued. If the insurer retains ownership of the expirations of such policies, the insurer need not offer a new agent.

(e) No insurer shall cancel or refuse to renew a policy of automobile insurance for two or fewer moving violations in any jurisdiction or jurisdictions during a twenty-four month period when the operator's record indicates that the named insured presently bears five points or fewer. However, this provision shall not apply under the following conditions:

(1) All five points were incurred from one violation.

(2) The driver's license or motor vehicle registration of the named insured has been suspended or revoked.

(f) The applicability of subsection (e) to one, other than the named insured, who either is a resident in the same household or who customarily operates an automobile insured under the policy shall be proper reason for the insurer thereafter excluding such individual from coverage under the policy, but not for cancelling the policy.

(g) As used in subsection (e) "points" shall mean points as set forth in 75 Pa.C.S. § 1501 et seq. (relating to licensing of drivers).

(h) The Insurance Department shall adopt appropriate rules and regulations to implement and enforce the provisions of this section.

Section 4. No insurer shall cancel a policy except for one [or the other of] *or more of* the following specified reasons:

(1) Nonpayment of premium; [or]

(2) The driver's license or motor vehicle registration of the named insured has been under suspension or revocation during the policy period; the applicability of this reason to one who either is a resident in the same household or who customarily operates an automobile insured under the policy shall be proper reason for the insurer thereafter excluding such individual from coverage under the policy, but not for cancelling the policy; or

(3) A determination that the insured has concealed a material fact, or has made a material allegation contrary to fact, or has made a misrepresentation of a material fact and that such concealment, allegation or misrepresentation was material to the acceptance of the risk by the insurer.

Section 4.1. No insurer shall increase an individual insured's premium or assess a premium surcharge on the basis of any moving traffic violation records, or any revocation or suspension records, or any accident records, if the insured establishes that the records are erroneous or inaccurate.

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

(1) Be approved as to form by the Insurance Commissioner prior to use;

(2) State the date, not less than thirty days after the date of such mailing or delivering on which such cancellation or refusal to renew shall become effective, except that such effective date may be fifteen days from the date of mailing or delivery when it is being cancelled or not renewed for the [reason] *reasons* set forth in [clause (1)] *clauses (1) and (2)* of section 4;

(3) State the specific reason or reasons of the insurer for cancellation or refusal to renew [or be accompanied by a statement that upon written request of the named insured, mailed or delivered to the insurer not less than twenty days prior to the effective date of cancellation or refusal to renew, the insurer will specify the reason or reasons for such cancellation, or refusal to renew the insurer to supply such information within five days of receipt by it of such request];

(4) Advise the insured of his right to request in writing, within [ten] *twenty* days of the receipt of the notice of cancellation or intention not to renew, [or] *and* of the receipt of the reason or reasons for the cancellation or refusal to renew [if they were not] *as* stated in the notice of cancellation

or of intention not to renew, that the Insurance Commissioner review the action of the insurer;

(5) Either in the notice or in an accompanying statement advise the insured of his possible eligibility for insurance through the automobile assigned risk plan[.];

(6) Advise the insured that he must obtain compulsory automobile insurance coverage if he operates or registers a motor vehicle in the Commonwealth and that the insured must notify the Department of Transportation that he has replaced said coverage.

Section 6. Nothing in this act shall apply:

(1) If the insurer has manifested its willingness to renew by issuing or offering to issue a renewal policy, certificate or other evidence of renewal, or has manifested such intention by any other means;

(2) If the named insured has demonstrated by some overt action to the insurer or its agent that he wishes the policy to be cancelled or that he does not wish the policy to be renewed;

(3) To any policy of automobile insurance which has been in effect less than sixty days, unless it is a renewal policy, except that no insurer shall decline to continue in force such a policy of automobile insurance **[solely]** on the basis of the grounds set forth in **subsection (a)** of section 3 hereof **and except that if an insurer cancels a policy of automobile insurance in the first sixty days, the insurer shall supply the insured with a written statement of the reason for cancellation.**

Section 7. There shall be no liability on the part of and no cause of action of any nature shall arise against the Insurance Commissioner, any insurer, the authorized representatives, agents and employes of either or any firm, person or corporation furnishing to the insurer information as to reasons for cancellation or refusal to write or renew for any statement made by any of them in complying with this act or for the providing of information pertaining thereto. ***The insurer must furnish the insured the notification required by the Federal Fair Credit Reporting Act, 15 U.S.C. § 1601 et seq., when such cancellations or refusal to write or renew occur.***

Section 8. (a) Any insured may within **[ten]** **twenty** days of the receipt by the insured of notice of cancellation or notice of intention not to renew, **[or]** **and** of the receipt of the reason or reasons for the cancellation or refusal to renew **[if they were not]** **as** stated in the notice, request in writing to the Insurance Commissioner that he 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 **[may in writing within ten days of notice of such refusal request the insurer to supply the reasons for such refusal. The insurer shall supply such reasons within five days of receipt by it of such request]** **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 **[ten]** **twenty** days of the receipt of such reasons, the

applicant may request in writing to the Insurance Commissioner that he 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 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 receipt of such request either order the policy written or reinstated or uphold the cancellation or refusal to renew. [In the case of a cancellation of or refusal to renew a policy, such policy shall remain in effect until the conclusion of such review or the date referred to in clause (2) of section 5 of this act, whichever is later, except for appeals from cancellations under clause (1) of section 4 in which case the policy shall terminate as of the date provided in the notice under clause (2) of section 5 unless the appeal is upheld or the policy reinstated]. If either of the parties shall dispute the commissioner's findings, such party shall have the right to a formal hearing. In the event a hearing is requested, the commissioner shall immediately issue notice of said hearing which shall state the time and place for hearing which shall not be less than thirty days from the date of the notice.*

(b) At the time and place fixed for the hearing in the notice, the parties shall have an opportunity to be heard and to show cause why an order should not be made by the commissioner to cease and desist from acts constituting a violation of this act.

(c) Upon good cause shown, the commissioner shall permit any person to intervene, appear and be heard at the hearing, in person or by counsel.

(d) 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 hearing.

(e) 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. The commissioner shall send a copy of the order to the persons participating in the hearing. In the case of a cancellation of or refusal to renew a policy, said policy shall remain in effect until the conclusion of such review or the date referred to in clause (2) of section 5, whichever is later, except for review of cancellations under clause (1) of section 4 in which case the policy shall terminate as of the date provided in the notice under clause (2) of section 5 unless the cancellation or refusal to renew is upheld or the policy reinstated.

Section 10. *(a) The Insurance Commissioner shall promulgate rules and regulations necessary for the administration of this act. The*

commissioner may provide in such rules and regulations for the establishment of a filing fee not exceeding fifteen dollars (\$15), to accompany the request for review. Should the Insurance Commissioner decide the appeal in favor of the insured, the filing fee shall be returned immediately and the fee shall be paid by the insurer. No part of the review by the Insurance Commissioner or his designated representative shall be subject to the provisions of [sections 31 through 36 of the act of June 4, 1945 (P.L.1388), known as the "Administrative Agency Law."] 2 Pa.C.S. §§ 501-508 (relating to practice and procedure of Commonwealth agencies). The decision of the Insurance Commissioner or his designated representative shall be subject to appeal in accordance with [sections 41 through 46 of that act] 2 Pa.C.S. §§ 701-704 (relating to judicial review of Commonwealth agency action) provided, however, that the court hearing such appeal shall not decline to affirm such decision on the ground that the requirements of [sections 31 through 36 of that act] 2 Pa.C.S. §§ 501-508 have not been complied with.

(b) Upon a determination that this act has been violated, the commissioner may issue an order requiring the insurer to cease and desist from engaging in such violation.

(c) Whenever the alleged violator fails to comply with an order of the commissioner to cease and desist from engaging in such violation, the commissioner may cause an action for injunction to be filed in the Commonwealth Court or the court of common pleas of the county in which the violation occurred regardless of whether an insurer is licensed by the commissioner.

Section 11. (a) [Failure by an insurer to comply with any order of the Insurance Commissioner or his designated representatives under section 9 of this act shall constitute an act of unfair discrimination under section 353 of the act of May 17, 1921 (P.L.682), known as "The Insurance Company Law of 1921."] *Any individual or insurer who violates any of the provisions of this act may be sentenced to pay a fine not to exceed five thousand dollars (\$5,000).*

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Section 2. This act shall take effect in 90 days.

APPROVED—The 5th day of October, A. D. 1978.

MILTON J. SHAPP