

State of Minnesota
Department of Commerce

In the Matter of the Proposed
Rules Governing Automobile
Insurance Nonrenewals Pursuant
to Minn. Stat. § 65B.17

Statement of Need
and Reasonableness
of Proposed Rules

Statement of Need and Authority

Minnesota Statute § 65B.17 as amended by laws of Minnesota, chapter 203, section 2, limited the rights of insurers to fail to renew automobile insurance policies except under certain specified conditions. Subdivision 2 of said Minn. Stat. § 65B.17 provided that the Commissioner of Commerce may adopt rules pursuant to chapter 14 to specify the grounds of the nonrenewal of automobile policies. Said subd. 2 also limited the basis for nonrenewal to certain enumerated factors. The rules were required to specify the manner in which these factors will be considered and to reflect the severity or reoccurrence of any moving violation, the amount of any payment made and the number of vehicles insured. Administrative penalties in monetary amounts not greater than \$500 per occurrence were authorized.

The rules as proposed set forth the criteria for nonrenewal of automobile insurance policies based upon the statutory directions of Minn. Stat. § 65B.17.

Definitions. Part 2770.7700.

Part 2770.7700, subpart 2. Chargeable accident defines what accidents may be considered in determining whether or not an automobile insurance policy may be nonrenewed. Certain exceptions to the definition are included. The basis of the exceptions are instances when the insured under the subject automobile insurance policy was either not at fault or the insurer recovered from third parties substantially all of the compensation he was obligated to pay the insured. The mere occurrence of an accident without the accident being the fault of the insured or resulting in substantial payments by the insurer should not give rise to a chargeable accident for purposes of nonrenewal.

Certain instances which may not be clearly within the main definition of chargeable accident are specifically mentioned as being included in this section. They include: payments under the comprehensive portion of the physical damage coverage of a policy when a vehicle falls through the ice of any bodied water, when glass breakage is paid under the comprehensive coverage of a policy where it would normally be paid under the collision coverage but the policy does not have collision coverage, when payments under the personal injury protection coverage to an insured driver in a single vehicle accident in which damage to property occurs. The inclusion of these particular incidents is made for the purpose of clarifying that certain incidents in which there might be some ambiguity as to whether or not they were included within the definition of chargeable

accident because of unique interpretations of the applicable statutes were so included within the definition. They fall within the basic intent of the statute of the definition of chargeable accident.

Subpart 3 of Part 2770.7700. Commercial vehicle includes the statutory definition of commercial vehicle. The purpose of this definition is to remove any ambiguity as to whether or not another definition from that found in the statute is meant under these rules.

Subpart 4 of Part 2770.7700. Emergency vehicle defines emergency vehicle by setting forth the instances in which a private passenger automobile may be deemed to be an emergency vehicle. The definition determines those instances by the manner in which the vehicle is being used and by whom. This definition is necessary to clarify when a private passenger automobile is an emergency vehicle for purposes of these rules.

Subpart 5 of Part 2770.7700. Experience period defines the period of time which may be used in determining the chargeable accidents which may be applicable to justifying the nonrenewal of an automobile insurance policy. The basic period is the three years immediately proceeding the renewal date of the policy. A period of three years was deemed proper as it was reasonably proximate to the date of non-renewal.

Subpart 6 of Part 2770.7700. Hit and run vehicle defines hit and run vehicle by reference to Minn. Stat. § 169.09, Subds. 1, 2, 4 and 5 or comparable statutes of another jurisdiction. This definition incorporates the statutory definition and the case law

pertaining to it thereby making use of the considerable body of law available in this area to determine what is a hit and run accident and the responsibilities in regard to the same.

Subpart 7 of Part 2770.7700. Multi-line contract defines the term multi-line contract as incorporating various types of policies which traditionally have been sold as separate insurance policies but are now sold as a package. In the definition homeowners and automobiles insurance coverages within one contract is offered as an example. Other examples would be packages for small businesses including workers' compensation, automobile, general liability and fire policies. The definition recognizes the current state of the industry.

Subpart 8 of Part 2770.7700. Nonrenewal defines exactly what nonrenewal is. The definition is broadly drafted to include various instances that effectly result in nonrenewal whether or not they are so specified as such in the notice. The definition carries out the intent expressed in the statute.

Subpart 9 of Part 2770.7700. Points defines points as being the method of determining the severity of each chargeable act and violation so as to be able to determine when sufficient cumulative grounds or "points" exist to allow an insurer to nonrenew a policy. Parts 2770.7900 and 2770.8000 more fully deal with the point system.

Subpart 10 of Part 2770.7700. Policy incorporates the statutory definition of policy as set forth in Minn. Stat. § 65B.14, Subd. 2, with the additional modification that the term includes motorcycles and commercially rated vehicles of less than five vehicles. Commercially rated vehicle policies for less than five

vehicles are used by many persons to secure a lower premium but the people who are subject to these policies are no different than any other private passenger automobile owner and should have the same benefits and protections.

Subpart 11 of Part 2770.7700. Private passenger vehicle clarifies that the definition of private passenger vehicle as set forth in Minn. Stat. § 65B.0017, Subd. 3, is the definition to be used in these rules.

Subpart 12 of Part 2770.7700. Private passenger vehicle insurance clarifies that the definition of private passenger vehicle insurance as set forth in Minn. Stat. § 65B.001, Subd. 2, with the modifications previously mentioned of the inclusion of commercially rated policies of less than five vehicles is the definition to be used in these rules.

Subpart 13 of Part 2770.7700. Violations. The definition of violations for the purposes of these rules include all violations that are a matter of record with the Department of Public Safety or other similar authorities in other states. Certain violations such as equipment violations, driving an unregistered vehicle, driving with an expired drivers license, or driving without a valid drivers license in possession which are deemed not to be of the type that would be deemed to raise the insurer's risk or exposure so as to justify nonrenewing the policy are excluded. These violations are excluded because they merely constitute violations under the broader definition in determining whether or not the insurer has sufficient grounds for points to nonrenew the subject policy but as noted don't in fact raise the risk or exposure of the insurer.

Part 2770.7800 sets forth the specific limits on the nonrenewal of an insurance policy.

Subpart 1 specifies the reasons for nonrenewal of the entire policy of insurance.

Subpart 1(a) incorporates the reasons specified in Minn. Stat. § 65B.17, Subd. 2(a).

Subpart 1(b) allows nonrenewal if the relevant number of points specified in Part 2770.8000 are equalled or exceeded. Further explanation of this particular provision will be made in regard to the discussion of Part 2770.8000.

Subpart 1(c) allows for termination of the contract if the agency contract between the insurer and agent is terminated. This particular exclusion is included because it does not go to nonrenewal for the type of reasons specified in the other section of rules but rather because of a business decision regarding the agent and not the insured. Certain protections are included for those over 65 years of age and where all of the terminated agent's business is transferred to someone else. The effect is that all insureds dealt with through the terminated agent must be treated in the same manner.

Subpart 1(d) allows all insureds of a particular insurer in the State of Minnesota to be terminated. This allows an insurer to cease business in the State of Minnesota and not be forced to continue to write business because of the nonrenewal rules.

Subpart 1(e) is of the same type as Subparts 1(c) and (d) in that it allows an insurer to cease writing a selected classification. All insureds in a classification must be treated equally and no new business in that particular class can be written in the state for at

least a year after the last nonrenewal. The aforementioned Subpart 1(c), (d) and (e) allow an entire group or class to be nonrenewed as long as all are treated in exactly the same manner. Nonrenewal under these circumstances cannot be a subterfuge for nonrenewing certain people.

Subpart 1(f) allows nonrenewal for failure to provide the insurer with sufficient information in regard to underwriting to assess the risks and other factors in regard to the insured. This is a misconduct situation by the insured and allows the insurer to nonrenew when he is prevented by the insured from determining the risks involved.

Subpart 1(g) allows nonrenewal in the limited instance in which two or more total theft of vehicles occurs and the vehicles are not recovered. This recognizes the right to nonrenew where there is proven high risk situation.

Subpart 1(h) provides the mechanism by which nonrenewal can be accomplished for reasons not specified in the proceeding sections if by following the procedures set forth an insurer can convince the commissioner to waive the penalties for nonrenewal. It should be noted that the waiver of the penalties does not affect the right of the insured to appeal the nonrenewal nor does it preclude the commissioner from disapproving the nonrenewal. It is merely a mechanism to allow the insurer in advance and when acting in a nonarbitrary and capricious manner to avoid later monetary penalty if the nonrenewal is later disallowed.

Subpart 2 of Part 2770.7800 specifies the reasons for nonrenewal of the physical damage portion of the policy. They are limited to the following:

Subpart 2(a) requires if three or more comprehensive claims have been made during the experience period or two or more comprehensive claims have been made during the most recent twelve month period then a policy not having a comprehensive deductible may be changed to a comprehensive policy that has a deductible of no more than \$100 or a policy having such a comprehensive deductible may be increased to the next highest deductible level or \$100 whichever is greater. This right is limited to only one such increase during the experience paid unless additional comprehensive claim payments occur after said increase. It recognizes the limited right to react to a proven risk or exposure situation by adjusting the deductible.

Subpart 2(b) allows nonrenewal where three payments for a single vehicle or four payments under a multiple vehicle insured during the experience period have been made for any combination of (1) comprehensive payments, except towing and those caused by natural causes; (2) chargeable accident collision payments; or (3) collision payments due to hit and run vehicles. The purpose of subparts 2(a) and 2(b) is to allow nonrenewal in the limited instances in which there have been substantial payments made or numerous occurrences in which payments have been made during the experience period, where there is in fact proven risk or exposure as evidenced by these payments.

Part 2770.7900 sets forth the schedule of points to be used in determining whether or not nonrenewal will be allowed. A point value is assigned to various violations and chargeable accidents occurring during the experience. The highest points assigned being 4 and the lowest 1/2. The higher of 4 points being assigned to the most severe violations and instances in which the exposure of the insured is the greatest. Four point situations are: (a) hit and run situations; (b) felonies involving the use of a motor vehicle; (c) theft and similar takings of motor vehicles; (d) violations of such severity that suspension or revocation of the operators license occurs, such as DWI and implied consent; and (e) driving after the suspension or revocation of operators license.

Subpart 3 assigns 2-1/2 points to less severe actions by the insured, such as reckless driving.

Subpart 4 assigns 1-1/2 points to careless driving.

Subpart 5 assigns 1 point for chargeable accidents where total payments exceed \$500 not including certain specified incidences, such as uninsured motorist payments, underinsured motorist coverage or personnel injury protection payments unless otherwise defined as a chargeable accident and open bottle violations.

Subpart 6 assigns 3/4 points to the second subsequent speeding violations for each individual operator during the experience period.

Subpart 7 assigns 1/2 point for the first speeding violation for an individual operator chargeable accidents except in the special instances previously specified where the total payment is \$500 or less allow open bottle violation and all other violations. The

purpose of this part is to assign points on a basis which assigns the greater number of points to situations or activities where the insured exposes the insurer to the greatest potential for liability.

Section 2770.8000 sets forth the number of points necessary to justify nonrenewals. The points are assigned pursuant to section 2770.7900. The number of vehicles in the household and the number of points necessary to renew for that number of vehicles are as follows: for one vehicle in the household, 2 points; for two vehicles in the household, 3 points; for three vehicles in the household, 3-1/2 points; for four or more vehicles in the household, 4 points. An exception to the foregoing is that if one operator accumulates 3 or more points by himself a policy or policies may be nonrenewed regardless of the number of insured vehicles in the house. That right is further limited by the fact that where a nonspouse household members owns a vehicle and has a policy of his or her own then that household member's drivers record cannot be used to determine the basis for nonrenewal except for violations in the four point category. Commercial vehicle violations cannot be used to accumulate points except for violations of the four point category. The foregoing sets forth a specific and definite method of calculating the points that will justify nonrenewal of an automobile insurance policy. The purpose is to limit nonrenewal to instances where by accumulation of the requisite number of points the insured has shown the potential for greater than normal risk or exposure to the insurer.

Part 2770.8100 specifies the form of the nonrenewal notice and the information to be included in it. The specific reasons for nonrenewal and the information to be included in the notice are governed by Minn. Stat. § 65B.19. Notice as to the right of complaint and the availability of the Minnesota Automobile Insurance Plan must be included in that notice. The make and year of the vehicle being nonrenewed must be on the notice as well. The specific reasons for nonrenewal must include the following information: (a) as to any violations being used to justify nonrenewal - the name of the driver, the type of violation, the date of the violation, and the point value of each violation must be specified; (b) as to chargeable accidents - the name of the driver, whether the payment is in excess of or under \$500, the date of the accident, and the point value of each accident must be specified; (c) in the case of physical damage nonrenewals - the date of the loss and the type of the loss must be specified. All of the foregoing requirements of the specific instances cited allow the insured to validate the correctness of the basis upon which the nonrenewal occurs and to be aware of all rights that he or she has in regard to contesting the nonrenewal. No waiver is sufficient without full and adequate notice of the insured's nonrenewal right. All of these requirements provide the insured sufficient information as to the basis of the nonrenewal so as to determine the veracity of said nonrenewal. The requirements also inform him of his rights, including the right to dispute the nonrenewal.

Part 2770.8200 requires the insurance company to keep a register of cancellations that will be available to the commissioner of commerce for a period of at least three years to assure compliance

with these rules and statute. This provides the commissioner with a means to assure compliance on a company wide basis or after discovering a high number of improper nonrenewals to contact others who may not have complained of their nonrenewal to assure that all their rights were granted to them.

Part 2770.8300 extends the scope of the rules to newly acquired vehicles and replacement vehicles which qualify for automatic coverage under the provisions of an automobile insurance policy. The purpose of this section is to preclude any ambiguity that might arise over this type of situation by clearly stating that the rules govern these situations.

Part 2770.8400 prohibits nonrenewal of a multi-line insurance contract including an automobile insurance policy. It does, however, allow the insurance company to nonrenew the rest of the multi-line contract if they issue to the named insured a separate policy of automobile insurance providing the same coverage as was afforded for automobile insurance under the multi-line policy. This would preclude a situation in which nonrenewal might be justified under one of the other policies covered by the multi-line contract but not nonrenewal of the automobile insurance coverage. It forecloses the possibility of nonrenewal for any reason other than those specified in these rules.

Part 2770.8500 sets the penalties for violation of these rules. The statute provides for penalties of up to \$500 per violation. The rule creates an incremental penalty for each violation during any calendar period with the initial violation incurring a \$100 penalty; the second violation, \$300; and the third and all other violations,

\$500. Waiver by the commissioner of the monetary penalties is allowable based upon a showing of good faith on the part of the insurer and adequate proof as to the reasonable basis of that good faith. Penalties may also be waived if compliance with Part 2770.7800, Subpart 1(h), previously described, is shown. This penalty method allows the penalty more appropriately to fit the situation. Companies that consistently violate these rules will have a much greater burden than those that may inadvertently fail, upon occasion, to satisfy them. It creates an incentive for compliance.

Subpart 2 of this section provides for disapproval of any nonrenewal if the nonrenewal is not in compliance with these rules. The commissioner is charged with disapproving said nonrenewal in the manner set forth in Minn. Stat. § 65B.21.

Subpart 3 of Part 2770.8500 acknowledges the right of the commissioner to not be limited in applying penalties or remedies by these rules if additional penalties and remedies are available under Minn. Stat. § 72A. Subpart 2 and subpart 3 preclude any ambiguity as to the commissioner powers under the rules and the effect of rules.

Subpart 4 specifies the effective date as being January 1, 1985 thereby giving sufficient notice to all parties so they can bring their practices into compliance with the rules.

SMALL BUSINESS CONSIDERATIONS

Minnesota Statutes § 14.115 requires that the impact of proposed rules on small businesses be considered in the development of those rules. Specifically, the statute, at subdivision 2, requires that less stringent compliance standards and reporting

requirements for small businesses be considered. The statute also requires that methods designed to reduce the impact of the rules on small businesses be incorporated into the rules if they are feasible and consistent with the statutory objectives associated with the rules.

Despite the lack of comments, the Department considered whether the provisions of the rule might be modified to accommodate the interests of small businesses.

A small business as authorized to insure would be affected by the rule's requirements. Consideration was given to possible ways in which the requirements might be relaxed for small businesses or amended to reduce any burden on small businesses. It was concluded, however, that the requirements of the rule are necessary to the attainment of the statutory objectives upon which the rules are based. The statutory objective upon which these rules are based is to limit the grounds upon which all insurers may nonrenew automobile policies. The insured's protection is uppermost in the intent of Minnesota Statute § 65B.17. It was determined that no requirements of the rules could be relaxed for insurers that might be small businesses without reducing the protections granted to their insureds. If the public perception then became that they would have less protection if their policy was with an insurer that was a small business the result could be a disinclination to purchase a policy from such a company.


Each of the methods described at Minnesota Statutes § 14.115, subdivision 2 (a) - (e) was considered in proposing the rule. The provisions contained in the proposed rule are believed to be necessary to achieve the legislative purposes.

State of Minnesota
Department of Commerce

In the Matter of the Proposed Adoption of Rules
Relating to Automobile Insurance Nonrenewal

Notice Regarding Statement of Need and Reasonableness for Auto
Insurance Nonrenewal

The Statement of Need and Reasonableness for Auto Insurance Nonrenewal was drafted prior to publication of the rules in the State Register. However, a copy of the same was not placed in the rules file until some time after publication. The draft copy was final in all respects and identical to the final copy except for correction of typographical errors. No one requested a copy of the Statement of Need and Reasonableness.



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