Amendments

Amendment 1 – Rep St. Fleur

Language:

ENSURING FAIR TREATMENT FOR EXCLUSIVE REPRESENTATIVE PRODUCERS UNDER MANAGED COMPETITION

Ms. St. Fleur of Boston moves to amend the bill (Senate, No. 2022) by adding the following section :

SECTION 3. The Commissioner of Insurance shall file a report with the Joint Committee on Financial Services no later than July 1, 2009, or within 90 days of the passage of this act, providing a summary of efforts made to facilitate the transition of Exclusive Representative Producers to voluntary agents and the outcome of those efforts, including the remaining number of non-appointed agents in the market. The report shall further examine private passenger automobile insurance premium payment plans and down payments required by insurers in the voluntary and residual market. The Commissioner shall meet with all Exclusive Representative Producers and insurers writing private passenger automobile insurance in the commonwealth who request such a meeting to provide agents with technical assistance and encourage voluntary contracts between agents and insurers. All such meetings shall take place within 30 days of the passage of this act.

Summary:

- This is the Hart Amendment; St. Fleur will withdraw and use as a platform to advocate for the Hart Amendment.

8

9 Clerk

10 Marky Hart.

Talking Points:

N/A

Amendment 2 – Rep. Sullivan

Language:

Mr. Sullivan of Fall River moves to amend the bill in Section 1, line 11, by inserting after the word "section" the following: "Said appeal hearing shall occur no more than twelve months after the request for the appeal hearing is made by the insured."

Summary:

- This amendment would ensure that the appeal hearings occur within 12 months of the initial request.
- Currently, there is no time frame in the General Laws or the CMR that dictates how quickly an appeal must be heard.

- The current backlog for the Board of Appeals is _____.

Talking Points:

- Currently, it takes between 6 and 9 months for an appeal to be heard.
- In past years this has taken as long as 18 months for an appeal to be heard.
- Currently, hearing officers each hear 25 cases a day, Monday through Thursday. On Fridays, hearing officers write the reports for the 100 hearings they heard that week.
- This is strictly a staffing issue at the Board of Appeals, which already staffs between 14-18 people versus how many appeals come in during a particular year
    - Years that have heavy winters tend to have more appeals, which accounts for longer wait times for drivers wishing to appeals.
- If we were to require all appeals to be held within 12 months and we had a year with heavy storms or increased accidents, the only way that the Board of Appeals could manage this requirement would be to hire additional staff.

Physically can hear more.

Amendment 3 – Rep. Sullivan

Language:

Mr. Sullivan of Fall River moves to amend the bill in Section 1 by striking out, in lines 7-8, the following: "Such complaint shall be accompanied by a filing fee to be determined by the board."; and by inserting after the word "appeal" in line 15 the following: " and it shall assess a processing fee, in an amount to be determined by the board, to the insured, to be paid within ten days of the decision"; and by inserting after the word "points" in line 18 the following: " and it shall assess a processing fee, in an amount to be determined by the board, to the insurer, to be paid within ten days of the decision."

Summary:

- This amendment would refund the $50 filing fee to any drivers who had their surcharge overturned by the Board of Appeals and in return the Board of Appeals would assess the $50 filing fee on the insurance company that initially made the wrong at fault determination surcharge.

Talking Points:

- The filing fee for an appeal is $50 which most individuals, including consumers feel is a fair and reasonable cost for an independent review.
- If a driver had to appeal to the court system instead of the Board of Appeals, the driver would be looking at a minimum of $250 of nonrefundable fees.
- This is a small price for all drivers to pay, especially when the majority of drivers ultimately saves thousands of dollars due to the Boards decisions.
- Good "bang for the buck"
- **Also, if you assess the insurance companies the $50, that assessment will be calculated as a cost to the insurance company and therefore, redistributed to all drivers through that companies rating. So you would be punishing all drivers in the Commonwealth for a small group of drivers who chose to appeal a decision.**

Amendment 4 – Rep. Sullivan

Language:

Mr. Sullivan of Fall River moves to amend the bill in Section 1, line 11, by inserting after the word "section" the following: "Said appeal hearing shall occur no more than twelve months after the request for the appeal hearing is made by the insured."

Summary:

- This amendment would ensure that the appeal hearings occur within 12 months of the initial request.
- Currently, there is no time frame in the General Laws or the CMR that dictates how quickly an appeal must be heard.

- The current backlog for the Board of Appeals is _____.

Talking Points:

- Currently, it takes between 6 and 9 months for an appeal to be heard.

- In past years this has taken as long as 18 months for an appeal to be heard.

- Currently, hearing officers each hear 25 cases a day, Monday through Thursday. On Fridays, hearing officers write the reports for the 100 hearings they heard that week.

- This is strictly a staffing issue at the Board of Appeals, which already staffs between 14-18 people versus how many appeals come in during a particular year
    - Years that have heavy winters tend to have more appeals, which accounts for longer wait times for drivers wishing to appeals.

- If we were to require all appeals to be held within 12 months and we had a year with heavy storms or increased accidents, the only way that the Board of Appeals could manage this requirement would be to hire additional staff.

Amendment 5 – Rep Walsh of Boston

Language:

Mr. Walsh of Boston moves to amend the Senate Bill 2022 by inserting the following section:- SECTION 3. Notwithstanding any general or special law to the contrary, any transition period from fixed-and-established market to competitive market, by law or regulation, including Title 211 CMR 79.19, for private passenger motor vehicle insurance shall expire no sooner than September 30, 2009.

Summary:

This Amendment would halt and freeze ANY advancement or move under competitive rating and the assigned risk plan. This would be drastic on SO MANY LEVELS.

In the Managed Competition Environment, All Auto Insurance Customers will be Able to Buy Insurance at a Rate no Higher Than the Voluntary Rate Charged by the Company Writing the Business

1. Every auto insurance customer in the Commonwealth will be able to purchase insurance. This was the case in the fixed and established market and is the case in the competitive market.
2. Customers, predominantly those with bad driving records, may be non-renewed with the carrier they had in the old market. Those with clean driving records during the last three years will not be non-renewed because insurance companies are forbidden from non-renewing these good drivers.
3. For customers who are non-renewed with their current carrier, their agents will be able to help them find a different carrier who may be willing accept the customer. If the agent can't find another carrier or is one of the few remaining ERPs with no voluntary contract, the ERP can place all such business with the MAIP. The ERP will be paid commission for both the Clean in Three business and the MAIP business. It is also expected that the number of non-renewals in the new market will be less than there were under the old market.
4. The customer, if placed in the MAIP, will be assigned to a carrier who is required to accept that customer and charge the lower of its own rate or the MAIP rate. This new rate, because it will be the lower of either the MAIP rate or the new carrier's rate, may be lower than the rate their old carrier would have changed.

Talking Points:

1. The Transition phase already ended. Pursuant to Bulletins 2008-9 and 2008-11 (the Bulletins) issued by the Commissioner last August, parameters were established for rate filings to be made by individual companies and the MAIP for any rates effective on or after April 1, 2009. Under the Bulletins, rates were

effectively capped to protect certain lower limit policyholders in certain urban territories. As early as January, 2009, companies started to file for approval of rates to be effective on or after April 1, 2009, have now already used those rates and customers have already purchased or renewed policies relying on those rates.

2. State law requires that a company send a renewal or non-renewal notice 45 days in advance of the date a policy is to renew. That means that all customers who had their policies renew during the months of April and May (one sixth of the customers in the Commonwealth) have already either been offered a renewed policy, shopped for a policy with a different carrier or will shortly be placed in the MAIP with rates assured to be no higher than the rate the company would have charged a voluntary customer. In short the transition from the fixed and established market already took place because the actions required for policies renewing during the months of April and May have already taken place.
3. This timing applies to all companies. However, a rate filing can now be made at any time. Therefore, some companies filed for new rates on the first date allowed by the new market i.e., April 1, and other companies have filed or are probably about to for rates to be effective at later dates. Therefore, if the market is somehow suspended for 6 months, events that have already occurred will mean the Bulletins and their required rate parameters for filings made with effective dates on or after April 1, 2009 will apply to some companies (because their rates happened to be approved for the months of April and May) and not others (because they haven't yet filed and presumably wouldn't be able to because of the proposed suspension). It would also mean that, since Geico and E-Surance and others who might be contemplating entering the market do not have approved rates, they could not enter until the end of the suspension period.
4. **The result is either profound unfairness to the companies who happened to not yet file or massive market disruption to the customers of the companies whose rates were approved for use on or after April 1 because their policies would have to be rerate to the rates in effect prior to April 1, 2009.**

Amendment 6 – Rep Evangelidis

Language:

Mr. Evangelidis of Holden moves to amend the bill by adding in line 18 following the word "points." the following language:-

The insurer will refund the individual any additional surcharges which were charged while the appeal was pending within 90 days.

Summary:

- **The intent of this amendment is to require that a refund be made by the insurer within 90 days, for any surcharge that was paid for by any driver who had their at fault determination reversed by the board of appeals.**

Talking Points:

- **Under the current regulation there is no time frame given on when an insurer has to refund any funds they collected due to surcharges that were imposed which were overturned by the Board.**
- **It is customary practice that the insurer refund the driver during the following business cycle, which is generally within 30 days.**
- **If this amendment were to pass, it could in essence hurt the driver in that it would then give insurers 90 days to refund what could amount to thousands of dollars when they typically would of refunded it within 30 days.**
- **This has never been an issue raised by consumers as far as we are aware.**

Amendment 7 – Rep Evangelidis

Language:

Mr. Evangelidis of Holden moves to amend the bill by adding in line 18 following the word "points." the following language:-

The insurer will refund the individual any additional surcharges which were charged while the appeal was pending within 90 days.

Summary:

- **The intent of this amendment is to require that a refund be made by the insurer within 90 days, for any surcharge that was paid for by any driver who had their at fault determination reversed by the board of appeals.**

Talking Points:

- **Under the current regulation there is no time frame given on when an insurer has to refund any funds they collected due to surcharges that were imposed which were overturned by the Board.**
- **It is customary practice that the insurer refund the driver during the following business cycle, which is generally within 30 days.**
- **If this amendment were to pass, it could in essence hurt the driver in that it would then give insurers 90 days to refund what could amount to thousands of dollars when they typically would of refunded it within 30 days.**
- **This has never been an issue raised by consumers as far as we are aware.**

Donato/Buoniconti Bills (House Docket 739, Senate Docket 1782)
Including Notes as to Suggested Changes

Notes on Buoniconti/Donato bill filed on behalf of Massachusetts Association of Insurance Agents

The bill submitted by Senator Buoniconti and Representative Donato is most appreciated and encouraging toward the ultimate goal of keeping the Board of Appeal as a third party independent arbiter between insurers and their insured as to the contest of the " as fault" character of an incident and related premium increase.

It does, however, have one noticeable flaw as to its wording. The last line of the first page reads, "...if the board finds that the insurer's application of the safe driver insurance plan was not in accordance with said provisions..."

Division of Insurance Commissioner Nonnie Burnes has taken the position that there is no longer a Safe Driver Insurance Plan (SDIP).

There are simple changes to the bill's language that would avoid any controversy and serve the purpose for which it is intended.

1. The simplest is to change the above quoted phrase to, "any SDIP plan filed by the commissioner or merit rating plan approved by the same under managed competition".

2. A second and possible better option is to still require the Commissioner to file an SDIP plan and, regardless of an individual insurer's Merit Rating Plan, the SDIP plan would serve as the universal standard to which the Board of Appeal will judge all appeals before it. Failing to do this might otherwise open the Board the practical problem of using different standards when adjudicating cases concerning different companies. Note that the Commissioner herself states that when overseeing that insurers "employ their individual merit ratings plans in a fair and equitable manner ...the Division will use the current standards of fault in use at the Board of Appeal as the benchmark against which to measure the quality of the Insurer's standards of fault". The standards being referenced are those enumerated in 211 C.M.R. 74.00.

3. A third option is to use the language of option #1 while codifying the commissioner's above quoted comment thereby notifying insurance companies "that regardless of the wording of an insurer's individual merit rating plan, the Board of Appeal will use the current long accepted universal standards of fault enumerated in 211 C.M.R. 74.00 in adjudicating appeals before it".

While not specifically relevant to the wording of the proposed bill, with recognition that Commissioner Burnes feels the Board is "costly and inefficient" (despite making a $2.5 million profit) and does not appreciate the due process and consumer protections it affords Bay State drivers, at the appropriate time, legislatures might consider moving the Board out of the Division of Insurance either having as an independent entity or as a part of another agency like Merit Rating, the Registry or Office of Administration and Finance (as has been previously proposed).

Timiby Bill (House Docket 3940)

An Act to allow appeals from application of merit rating plans under competitive private passenger automobile insurance

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Section 113P of Chapter 175 of the General Laws as appearing in the 2006 Official Edition is hereby amended in the caption by striking the words "safe driver insurance plan" and inserting in place thereof the following:– merit rating plans

SECTION 2. Section 113P of Chapter 175 of the General Laws, as so appearing, is hereby further amended in line 2, by inserting after the words "provision of" the following:– an insurer's merit rating plan under competitive markets or

SECTION 3. Section 113P of Chapter 175 of the General Laws, as so appearing, is hereby further amended in line 14, by inserting after the words "application of" the following:– the insurer's merit rating plan approved by the commissioner or

SECTION 4. Section 113P of Chapter 175 of the General Laws, as so appearing, is hereby further amended in line 18, by inserting after the word "of" the following:– its merit rating plan or

Amended

Chapter 175: Section 113P. Appeals from application of merit rating plans ~~safe driver insurance plan~~

Section 113P. Any insured aggrieved by any determination of an insurer as to the application of any provision of **an insurer's merit rating plan under competitive markets or** the safe driver insurance plan established by the commissioner pursuant to the provisions of section one hundred and thirteen B may, within thirty days thereafter, file a written complaint with the board of appeals on motor vehicle policies and bonds, hereinafter called the board. Such complaint shall be accompanied by a filing fee to be determined by the board. The board may deny such appeal without a hearing on the basis of the standards of fault to be promulgated by the board. In the notice of its decision to deny the complaint by the insured, the board shall notify the insured that he has a right to a hearing on the application of the **merit rating plan or** safe driver insurance plan.

The board shall provide the insurer and the insured with at least ten days notice of any hearing held under this section. If, after a hearing, the board finds that the application of the **insurer's merit rating plan or the** safe driver insurance plan was in accordance with the standards promulgated by the board and the provisions of **the insurer's merit rating plan approved by the commissioner or** the safe driver insurance plan established by the commissioner, it shall deny the appeal. If the board finds that the insurer's application of **its merit rating plan or** the safe driver insurance plan was not in accordance with said standards and provisions, it shall order the insurer to make the appropriate premium adjustment. The board may designate a person to act as a hearing officer pursuant to this section. The hearing officer shall file a memorandum of his findings or order in the office of the board, and shall send a copy to the insurer and the insured.

Any person or company aggrieved by any finding or order of the board may appeal therefrom to the superior court department of the trial court, pursuant to the provisions of section fourteen of chapter thirty A. The appellant shall file with his appeal a duly certified copy of the complaint and of the finding and order thereon, and, if the appeal is taken from a finding and order of the board in respect to a cancellation, the clerk of such court shall forthwith, upon the filing of such an appeal, give written notice of the filing thereof to the registrar of motor vehicles and to the appellee. Said court shall, after such notice to the parties as it deems reasonable, give a summary hearing on such appeal and shall have such jurisdiction in equity to review all questions of fact and law, and to affirm or reverse such finding or order and may make any appropriate decree. Said court or justice may allow such appeal, finding or order to be amended. The decision of the court or justice shall be final. The clerk of such court shall, within two days after entry thereof, send an attested copy of the decree to each of the parties and the commissioner and to said registrar, or his office. Said court or justice may make such order as to costs as it or he deems equitable. Said court may make reasonable rules to secure prompt hearings on such appeals and a speedy disposition thereof.

Current wording

Chapter 175: Section 113P. Appeals from application of safe driver insurance plan

Section 113P. Any insured aggrieved by any determination of an insurer as to the application of any provision of the safe driver insurance plan established by the commissioner pursuant to the provisions of section one hundred and thirteen B may, within thirty days thereafter, file a written complaint with the board of appeals on motor vehicle policies and bonds, hereinafter called the board. Such complaint shall be accompanied by a filing fee to be determined by the board. The board may deny such appeal without a hearing on the basis of the standards of fault to be promulgated by the board. In the notice of its decision to deny the complaint by the insured, the board shall notify the insured that he has a right to a hearing on the application of the safe driver insurance plan.

The board shall provide the insurer and the insured with at least ten days notice of any hearing held under this section. If, after a hearing, the board finds that the application of the safe driver insurance plan was in accordance with the standards promulgated by the board and the provisions of the safe driver insurance plan established by the commissioner, it shall deny the appeal. If the board finds that the insurer's application of the safe driver insurance plan was not in accordance with said standards and provisions, it shall order the insurer to make the appropriate premium adjustment. The board may designate a person to act as a hearing officer pursuant to this section. The hearing officer shall file a memorandum of his findings or order in the office of the board, and shall send a copy to the insurer and the insured.

Any person or company aggrieved by any finding or order of the board may appeal therefrom to the superior court department of the trial court, pursuant to the provisions of section fourteen of chapter thirty A. The appellant shall file with his appeal a duly certified copy of the complaint and of the finding and order thereon, and, if the appeal is taken from a finding and order of the board in respect to a cancellation, the clerk of such court shall forthwith, upon the filing of such an appeal, give written notice of the filing thereof to the registrar of motor vehicles and to the appellee. Said court shall, after such notice to the parties as it deems reasonable, give a summary hearing on such appeal and shall have such jurisdiction in equity to review all questions of fact and law, and to affirm or reverse such finding or order and may make any appropriate decree. Said court or justice may allow such appeal, finding or order to be amended. The decision of the court or justice shall be final. The clerk of such court shall, within two days after entry thereof, send an attested copy of the decree to each of the parties and the commissioner and to said registrar, or his office. Said court or justice may make such order as to costs as it or he deems equitable. Said court may make reasonable rules to secure prompt hearings on such appeals and a speedy disposition thereof.

2925	Robert F. Fennell	An Act relative to motor vehicle insurance charges	
2268	Stephen L. DiNatale	An Act Relative to the Motor Vehicle Board of Appeals	
3145	Garrett J. Bradley	An Act to Clarify the Terms of Motor Vehicle Liability Bonds and Policies	
3154	John J. Binienda	An Act relative to motor vehicle insurance surcharges	906
182	Garrett J. Bradley	An Act to repeal no fault motor vehicle insurance	
739	Paul J. Donato	An Act relative to an appeal process of motor vehicle insurance surcharges under managed competition	
1857	Kathi-Anne Reinstein	An Act relative to motor vehicle insurance surcharges	
3940	Walter F. Timilty	An Act Relative to Allow Appeals From Application of Merit Rating Plans	

HOUSE BILLS ABOUT BOA

Cite to Industry Funding of Board of Appeal

Chapter 182 of the Acts of 2008 reads:

> 7006-0020 For the operation of the division of insurance, **including the expenses of the board of appeal** on motor vehicle liability policies and bonds .... notwithstanding any general or special law to the contrary, **100 per cent** of the amount appropriated in this item **shall be assessed upon the institutions which the division currently regulates...**

Note that the Board of Appeal costs taxpayers nothing and, by virtue of a $50 user fee and the processing of approximately 50,000 hearings per year, the Board inputs $2,500,000 yearly into the State's General Fund.

Here is the 2008 State Budget regarding the DOI – it states "100 per cent of the amount appropriated in this item shall be assessed upon the institutions which the division currently regulates" (the insurance industry)

Division of Insurance.

7006-0020.. For the operation of the division of insurance, including the expenses of the board of appeal on motor vehicle liability policies and bonds and certain other costs of supervising motor vehicle liability insurance and the expenses of the fraudulent claims board; provided, that the positions of counsel I and counsel II shall not be subject to chapter 31 of the General Laws; provided further, that contracts or orders for the purchase of statement blanks for the making of annual reports to the commissioner of insurance shall not be subject to the restrictions prescribed by section 1 of chapter 5 of the General Laws; provided further, that the division shall maintain a phone system in its western Massachusetts office that shall immediately transfer calls made to that office to the consumer assistance office in the city of Boston during any business hours when the western Massachusetts office is closed; provided further, that the division shall have an employee or other person answering all initial incoming telephone calls, excluding all direct in-dial calls, between the hours of 9:00 a.m. and 5:00 p.m.; provided further, that the division shall designate an employee to handle all incoming calls relative to chapter 218 of the acts of 1995 or regulations promulgated under section 51 of chapter 111 of the General Laws; provided further, that notwithstanding any general or special law to the contrary, 100 per cent of the amount appropriated in this item shall be assessed upon the institutions which the division currently regulates except for licensed business entity producers under powers granted to the division by general or special law or regulation; and provided further, that such assessment shall be in addition to any assessments that the division currently assesses upon such institutions and shall be made at a rate sufficient to produce $10,960,219 in additional revenue that will pay for this item..... $10,960,219