Statements before the 3/18/09 Joint Committee on Financial Services Hearing Regarding H 888 and S 461

Commissioner Burnes Bulletin to Insurance Carriers Announcing the Abolishment of the Board Under Managed Competition, Specifics Concerning Insurance Company Internal Review Requirements and Consumer Bill of Rights

January 8, 2009

COMMONWEALTH OF MASSACHUSETTS

Office of Consumer Affairs and Business Regulation

DIVISION OF INSURANCE

One South Station • Boston, MA 02110-2208
(617) 521-7794 • FAX (617) 521-7475
TTY/TDD (617) 521-7490
http://www.mass.gov/doi

DEVAL L. PATRICK
GOVERNOR

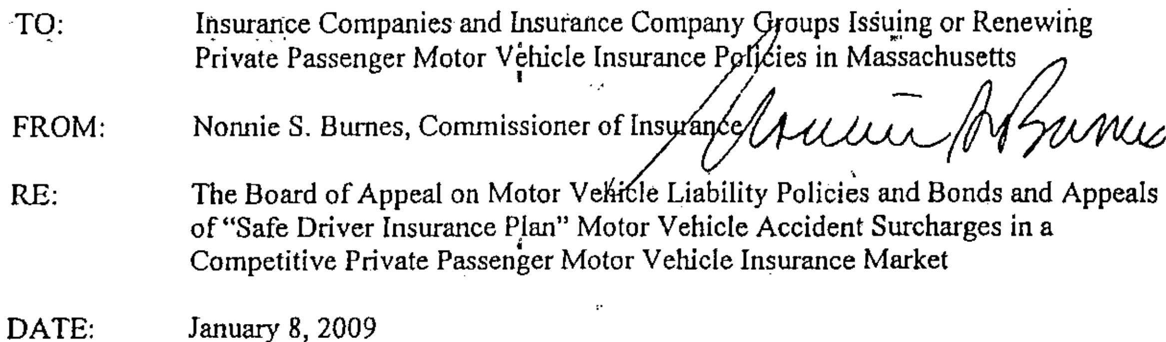
TIMOTHY P. MURRAY
LIEUTENANT GOVERNOR

DANIEL O'CONNELL
SECRETARY OF HOUSING AND ECONOMIC DEVELOPMENT

DANIEL C. CRANE
DIRECTOR

NONNIE S. BURNES
COMMISSIONER OF INSURANCE

BULLETIN 2009-01



TO: Insurance Companies and Insurance Company Groups Issuing or Renewing Private Passenger Motor Vehicle Insurance Policies in Massachusetts

FROM: Nonnie S. Burnes, Commissioner of Insurance

RE: The Board of Appeal on Motor Vehicle Liability Policies and Bonds and Appeals of "Safe Driver Insurance Plan" Motor Vehicle Accident Surcharges in a Competitive Private Passenger Motor Vehicle Insurance Market

DATE: January 8, 2009

This Bulletin provides guidance to insurance companies and insurance company groups issuing or renewing private passenger motor vehicle insurance policies in the Commonwealth (collectively "Insurers") regarding the application of "Safe Driver Insurance Plan" motor vehicle at fault accident surcharges and policyholder appeals for those accident surcharges ("SDIP Surcharge Appeals") to the Board of Appeal on Motor Vehicle Liability Policies and Bonds[1] ("Board of Appeal").

As part of fixing-and-establishing private passenger motor vehicle insurance rates under M.G.L. c. 175, § 113B, the Commissioner of Insurance was charged with establishing the "Safe Driver Insurance Plan" ("SDIP"), a merit rating plan which provided for the adjustment of insurance rates and premiums on the basis of motor vehicle accident claims and traffic law violations. Certain at fault accidents, traffic law violations and comprehensive insurance coverage claims constituted "surchargeable incidents" under the SDIP. A "surchargeable incident" includes an accident for which the operator was more than 50% at-fault ("At-fault Accident"). A surchargeable incident under the SDIP may have resulted in an increased premium for the at fault motor vehicle operator in accordance with the SDIP. Any operator who was aggrieved by his or her Insurer's determination that the operator was more than 50% at-fault in an accident

[1] The Board of Appeal on Motor Vehicle Liability Policies and Bonds is established pursuant to M.G.L. c. 26, § 8A.

under the SDIP during a fixed-and-established market was entitled to appeal the Insurer's decision to the Board of Appeal pursuant to M.G.L. c. 175, § 113P.

In a competitive market, Insurers' private passenger motor vehicle insurance rates are not subject to the provisions of the Commissioner's SDIP, previously applicable to rates established under M.G.L. c. 175, § 113B. SDIP Surcharge Appeals under M.G.L. c. 175, § 113P do not exist under the statutory framework of a competitive market. Rather, Insurers are entitled to implement their own merit rating plans to utilize a motor vehicle operator's past motor vehicle insurance claim and traffic law violation information to calculate the applicable policy premium. Individual Insurer merit rating plans are filed with and reviewed by the Division of Insurance ("Division") as part of an Insurer's rate filing.

Insurers may treat At-fault Accidents and traffic law violations in a variety of ways under their own merit rating plans in a competitive market. For example, some Insurers provide "accident forgiveness" under which the Insurer will not increase a policyholder's premium for the first At-fault Accident under the policy. Other Insurers provide "disappearing deductibles" under which the Insurer will reduce incrementally a policyholder's deductible for each of the policyholder's "accident free" years while insured with that Insurer. Additionally, if a policyholder is involved in an At-fault Accident or traffic law violation that results in an increase in his or her policy premium with his or her current Insurer, that policyholder may elect to shop to find another Insurer that may treat the At-fault Accident or traffic law violation more favorably. Of course, any policyholder who thinks he or she is being treated unfairly by an Insurer may call the Division's Consumer Services Section for assistance.

Insurers have continued to follow the procedures regarding SDIP Surcharge Appeals pursuant to 211 CMR 134.00, *et seq.*, since the onset of the transition year to managed competition on April 1, 2008, notwithstanding the change in the statutory framework under which this market now operates. In order to facilitate an orderly transition from this longstanding, but now no longer applicable, practice for both Insurers and affected consumers, I am initiating new procedures for Insurers providing notices of At-fault Accident decisions to involved operators or policyholders.

For private passenger motor vehicle insurance policies issued or renewed with effective dates on or after April 1, 2008 under which an At-fault Accident claim is paid on or after April 1, 2009, Insurers shall notify the involved operator or policyholder within the time frames provided in 211 CMR 134.00, *et seq.* of payment of the At-fault Accident claim, in accordance with requirements to be set forth in the Motor Vehicle Insurance Merit Rating Board's ("MRB")[2] manuals. Such notice shall contain all the information identified as required in the attached Appendix A. This includes, but is not limited to, the title and the telephone number of the Insurer's representative who can respond to any questions or concerns regarding the notice. The form also shall notify the involved operator of the operator's right to request an additional review of the accident circumstances underlying the original determination that the operator was more than 50% at fault by a claims manager of the Insurer. The Insurer's additional review must be completed within 30 days of the involved operator's request for such review. The Insurer may

[2] *The Motor Vehicle Insurance Merit Rating Board is established pursuant to M.G.L. c. 6, § 183.*

not charge the involved operator for this additional review. The Insurer also shall enclose a copy of the Division's Bill of Rights with the notice of the At-fault Accident.

Insurers also shall notify the involved operator or policyholder of the reversal of an At-fault Accident determination in accordance with requirements to be set forth in the MRB's manuals. Such notice also shall contain all the information identified as required in the attached Appendix B.

All Insurers must employ their individual merit rating plans in a fair and equitable manner. The Division expects that any review of an At-fault Accident will be genuine, complete and meaningful. The Division expects that Insurers will use generally accepted standards of fault in making their determinations and that the standards will be applied uniformly and consistently. 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. In addition, the Division expects that the compensation for any one reviewing such an At-fault Accident determination will be unaffected by his or her decision(s).

Insurers must maintain records regarding At-fault Accident determinations for at least three years so that the Division may conduct market conduct examinations to ensure that Insurers are meeting their obligations. Insurers shall be on notice that the Division is prepared to use its substantial disciplinary tools, from fines to license suspension, in the event that an Insurer fails to meet its obligations as outlined in this Bulletin.

APPENDIX A

SAMPLE NOTICE TO OPERATOR OF AN AT-FAULT ACCIDENT REPORT

The ______________________________ Insurance Company ("__________") is providing this notice to inform you that an at-fault accident decision for a claim recently paid by "________" is being reported to the Merit Rating Board based on our determination that as the operator of the vehicle, you were more than 50% at fault for the accident described below. This at-fault accident may affect the cost of your auto insurance in the future.

<table>
<tr><th colspan="5">OPERATOR INFORMATION*</th></tr>
<tr><td>Name:</td><td colspan="4">*</td></tr>
<tr><td>Address:</td><td colspan="4">*</td></tr>
<tr><td>City/State:</td><td colspan="4">*</td></tr>
<tr><td>Zip Code:</td><td colspan="4">*</td></tr>
<tr><td>Operator's Licensing State:</td><td colspan="4">*</td></tr>
<tr><th colspan="5">ACCIDENT INFORMATION*</th></tr>
<tr><td>Accident Date</td><td>Claim Date</td><td>State</td><td>Policy Number</td><td>Claim Number</td></tr>
<tr><td>*</td><td>*</td><td>*</td><td>*</td><td>*</td></tr>
<tr><th colspan="5">POLICYHOLDER INFORMATION (*only if different from the operator information)</th></tr>
<tr><td>Name:</td><td colspan="4">*</td></tr>
<tr><td>Address:</td><td colspan="4">*</td></tr>
<tr><td>City/State:</td><td colspan="4">*</td></tr>
<tr><td>Zip Code:</td><td colspan="4">*</td></tr>
<tr><td>Policyholder's Licensing State:</td><td colspan="4">*</td></tr>
</table>

If you were not the operator of the vehicle involved in the accident described above, or if you believe you were not more than 50% at fault in this accident, or the operator's mailing address is different from the address shown above, please contact us within 30 days of this notice at:

(Title of Company Representative *)
(Telephone Number of Company Representative *)
(Insurance Company Name *)
(Insurance Company Address *)
(Insurance Company Phone *) (Insurance Company Website *)

*You have the right to request an additional review by one of our claims managers of our determination that you were more than 50% at fault in this accident. We must complete this additional review within 30 days of our receipt of your request.

<u>* INDICATES REQUIRED CONTENT OF NOTICE TO OPERATOR</u>

APPENDIX B

SAMPLE NOTICE TO OPERATOR OF AN AT-FAULT ACCIDENT REPORT REVERSAL

The ______________________________________ Insurance Company ("__________") is providing this notice to inform you that we have notified the Merit Rating Board to reverse the at-fault accident decision described in this notice that was previously reported to them because we have received additional information that indicates that, as the operator of the vehicle, you were not more than 50% at fault for the accident.

OPERATOR INFORMATION*				
Name:	*			
Address:	*			
City/State:	*			
Zip	*			
Operator's Licensing State	*			
ACCIDENT INFORMATION*				
Accident Date	Claim Date	State	Policy Number	Claim Number
*	*	*	*	*
POLICYHOLDER INFORMATION (* only if different from operator information)				
Name:	*			
Address:	*			
City/State	*			
Zip Code	*			
Policyholder's Licensing State	*			

If you have any questions concerning this notice, please contact us at:

(Title of Company Representative *)
(Telephone Number of Company Representative *)
(Insurance Company Name *)
(Insurance Company Address *)
(Insurance Company Phone *) (Insurance Company Website *)

*** INDICATES REQUIRED CONTENT OF NOTICE TO OPERATOR**

ALL COMMUNICATIONS SHOULD BE ADDRESSED TO THE CLERK

Commonwealth of Massachusetts

DISTRICT COURT DEPARTMENT
SOMERVILLE DIVISION
175 FELLSWAY
SOMERVILLE, MASSACHUSETTS 02145

Clerk's Office
MIDDLESEX COUNTY

ROBERT "TED" TOMASONE
Clerk Magistrate

March 3, 2009
SOMERVILLE, 20

Honorable Peter Koutoujian
Chairman of Financial Services
House of Representatives
State House, Room 130
Boston, MA 02133

Dear Chairman Koutoujian:

As you may or may not be aware, Division of Insurance Commissioner Nonnie Burnes has recently announced that the Division of Insurance, Board of Appeals is to cease conducting administrative law hearings adjudicating an insured's dispute with their carrier as to a determination of fault for a motor vehicle with their carrier as to a determination of fault for a motor vehicle accident. After the termination of the Board on April 1, 2009, those who still feel aggrieved by an internal insurance company review (by the same privately owned profit driving entity who first made the "at fault"determination) premium increase and black mark on their driving record the only remaining recourse is to the Courts of the Commonwealth.

The Board of Appeals conducts 50,000 hearings per year. The process includes manageable, efficient, timely, magistrate-like hearings governed by M.G.L. Ch. 30A rules satisfying Superior Court requirements conducted by a Hearing Officer as an impartial regulatory arbiter. Most importantly, by virtue of its $50.00 user fee, the Board is income generating.

As we are all painfully aware, woefully short staffed as we are (and only getting worse) the courts simply do not have resources to direct toward matters that should continue to be resolved by the Board of Appeals. Additionally, no effective entity serving the consumers of the Commonwealth that puts $2,500,000 into the State's General Funds should be cut in these most difficult financial times.

Please know that there are numerous bills that have been submitted in this legislative session that would serve to maintain the Board as is, including one by State Senator Stephen Buoniconti and State Representatives, Walter Timilty and Paul Donato. They should be vigorously supported as their passage will keep disputes within the Board's jurisdiction out of our already overburdened courts and keep monies of any and all amounts coming into the State's operating budget at a time when they are so desperately needed.

FYI:

If a public hearing is held, I would very much like to appear on behalf of the Board of Appeals.

Sincerely,

Ted

Robert "Ted" Tomasone
Clerk Magistrate

THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL

ONE ASHBURTON PLACE
BOSTON, MASSACHUSETTS 02108

MARTHA COAKLEY
ATTORNEY GENERAL

(617) 727-2200
www.mass.gov/ago

March 11, 2009

The Honorable Nonnie Burnes
Commissioner of Insurance
Division of Insurance
One South Station
Boston, MA 02110

Re: Board of Appeal

Dear Commissioner Burnes:

We are writing to you again regarding the Board of Appeal. As you know, the Board provides an independent third party review when insurance companies surcharge drivers and find those drivers "at fault" in accidents. Through an appeal to the Board, a consumer can challenge an insurer's determination. If successful, the consumer can reverse the erroneous insurer decision, and eliminate what might otherwise be thousands of dollars in surcharges, a black mark on the consumer's driving record, and a loss of the consumer's right to stay with the insurance company of his or her choice. (Under the regulations your office recently promulgated, when an insurer finds a customer with a clean driving record "at fault," the insurer is no longer required to renew that driver's policy.) Given the incentives insurance companies have to uphold their own determinations of fault, it is important for Massachusetts consumers to have a simple, accessible independent third party review of insurer "at fault" determinations.

In your January 2009 Bulletin to insurance companies, you informed them that you were eliminating the Board's right to fix erroneous insurer surcharges and "at fault" determinations. In place of the Board, you proposed to allow insurers to simply review their own decisions. You noted that the Board's consumer protection role was "longstanding, but no longer applicable" because you had de-regulated the auto insurance marketplace. Before you issued the Bulletin, we advocated against eliminating the Board, urging you to maintain Board review or some alternative independent, third party review of insurer surcharge decisions. In our view, you have ample regulatory authority to continue to require such review, even if the fix-and-establish system for rate-setting is no longer in place.

In the time since you elected to eliminate the Board's role, others have challenged this change in policy, including consumer advocates, insurance agents, and even certain insurance companies. The Legislature, no doubt based on constituent concerns, is now considering action on this issue. Two identical bills, Senate Docket #1782 and House Bill 888, which would

reinstate the Board of Appeals' authority, have over 100 legislative co-sponsors, including Senator Stephen Buoniconti, Chairman of the Financial Services Committee.

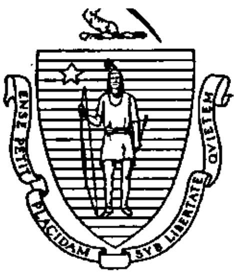
In light of the real impact that surcharge determinations have on consumers, which cannot be erased by subsequent shopping for a new insurance carrier, we support this legislation. We have offered to work with the Legislature on certain technical amendments which will make the bill an effective tool in protecting consumer rights.

Given the legislative landscape and what appears to be widespread support for Senate Docket #1782 and House Bill 888, we ask you to refrain from dismantling the Board of Appeals and provide additional time for possible legislative change, or else simply revoke Bulletin 2009-01. Removing an independent third party review of surcharges is an anti-consumer policy that is not required by law and has no corresponding benefit to competition, policyholders or the public. Moreover, given the possibility that the Legislature will re-invoke the Board's authority by statute, proceeding with this change poses the risk of significant disruption, with some insurers starting to use their own internal review systems in lieu of the Board, and then having to shift back to a Board review process again. No doubt this would create consumer confusion as well. It would be better to allow the Legislature time to resolve the issue, and in the interim keep the Board's role in place.

We have attached a copy of our earlier letter to you regarding the Board of Appeal, for your convenience. If you would like to discuss either the legal or policy issues involved further, please do not hesitate to contact us.

Cordially,

Martha Coakley



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL

ONE ASHBURTON PLACE
BOSTON, MASSACHUSETTS 02108

MARTHA COAKLEY
ATTORNEY GENERAL

(617) 727-2200
(617) 727-4765 TTY
www.mass.gov/ago

FOR IMMEDIATE RELEASE
March 12, 2009

MEDIA CONTACT:
Amie Breton
(617) 727-2543

ATTORNEY GENERAL MARTHA COAKLEY PUSHES FOR REINSTATEMENT OF SURCHARGE HEARINGS FUNCTION OF BOARD OF APPEALS TO PROTECT CONSUMERS

BOSTON –Attorney General Martha Coakley's Office is strongly advocating for the reinstatement of the insurance surcharge hearings function of the Board of Appeals (the Board) in order to protect consumers. The Attorney General's Office supports legislation to reinstate the board as a critical tool to protect ratepayers in a deregulated automobile insurance market. In addition, the Attorney General's Office is urging the Division of Insurance (DOI) to reinstate the Board in anticipation of potential legislative action on this issue. Attorney General Coakley sent a letter to Commissioner Nonnie Burnes today making this request and expressing her office's concerns about the impact on consumers.

"Given the incentives insurance companies have to uphold their own decisions, it is important for Massachusetts consumers to have an independent, third party review of insurers 'at fault' determinations," said Attorney General Coakley. "Removing an independent third party review of surcharges is an anti-consumer policy that is not required by law and has no corresponding benefit to competition, policyholders or the public. Our office will work with DOI and the Legislature to reinstate an independent, third party review process for consumers."

Under Massachusetts law, the Board was established to hear consumer appeals of determinations by insurance companies regarding who is at fault in an accident, insurance policy cancellations and decisions of the Registry of Motor Vehicles. In a January 2009 bulletin, the DOI informed insurance companies that it was eliminating the Board's right to fix erroneous insurer surcharges and "at fault" determinations in favor of allowing insurers to establish a system to review their own decisions. The DOI noted in the bulletin that because the Commonwealth moved to a deregulated insurance system, the Board's consumer protection role was no longer applicable.

Legislators, consumer advocates, insurance agents and certain insurance companies have also challenged this change in policy. Currently, the Legislature is considering action on two identical bills, Senate Docket 1782, sponsored by Senator Stephen Buoniconti (D—West Springfield), and House Bill 888, sponsored by Representative Paul Donato (D—Medford). The legislation reinstates the Board of Appeals' authority to review insurance companies' decisions

to find drivers "at fault" in accidents and assess insurance surcharges. In addition to Senator Buoniconti and Representative Donato, over 100 legislators co-sponsored the measure to reinstate the Board of Appeals. The Attorney General's Office supports this legislation in light of the impact that surcharge determinations have on consumers.

Attorney General Coakley sent a letter to Insurance Commissioner Nonnie Burnes today requesting that the Board's surcharge hearing function be reinstated while the Legislature considers these bills, and expressing her office's concerns about the impact on consumers. In the letter, the Attorney General's Office advocates for maintaining an independent third party review of insurer surcharge decisions as a crucial mechanism for protecting consumers. The letter highlights the benefits of a third party system, stating that consumers can reverse erroneous insurer decisions and eliminate thousands of dollars in surcharges and negative reports on a driver's record. This letter follows a similar request sent to the DOI last October, opposing the elimination of the Board function.

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DIVISION OF INSURANCE
One South Station • Boston, MA 02110-2208
(617) 521-7794 • FAX (617) 521-7758
http://www.mass.gov/doi

DEVAL L. PATRICK
GOVERNOR

TIMOTHY P. MURRAY
LIEUTENANT GOVERNOR

GREGORY BIALECKI
SECRETARY OF HOUSING AND ECONOMIC DEVELOPMENT

NONNIE S. BURNES
COMMISSIONER OF INSURANCE

March 16, 2009

The Honorable Stephen Buoniconti
Senate Chairman
The Honorable Peter Koutoujian
House Chairman
Joint Committee on Financial Services
State House
Boston, MA 02133

Dear Chairmen Buoniconti and Koutoujian:

I am writing to you regarding this Wednesday's hearing of the Joint Committee on Financial Services at which you will consider legislation to create an at-fault accident determination process.

The at-fault accident determination function of the Board of Appeal ("BOA") is authorized, by statute, only in the context of a "fix-and-establish" state rate setting system; it is not authorized in a competitive marketplace. The BOA was required in the "fix-and-establish" system to provide a mechanism for reviewing premium decisions by the companies. The consumers had no leverage in negotiating with their insurers because the penalties for at-fault accidents were set by the state and all insurers charged the same for at-fault accidents. We are now seeing the companies competing on their merit rating plans with such offerings as accident forgiveness for the first accident. Under the old system, consumers were required to pay a $50 fee, regardless of the outcome of their appeal, and had to wait at least seven months for a hearing.

Although this at-fault determination system has no role in our new competitive market, I remain intently focused on protecting consumers' rights. I asked my staff to research what other states do to assist consumers when they have a dispute with their insurer about the determination of fault. Our research reflected that the majority of states have no formal procedure for this review, and, most certainly, no other state has any system even close to the Board of Appeal. Although no other state has a system in place for this type of review, it is important we have a structure in place to assist these consumers.

In January, I issued a Bulletin with robust protections that provides for a faster and cheaper review for the consumer. Under this Bulletin, insurance companies must continue to send notices to their policyholders if they make a determination that the policyholder is "at fault"

Introductory Comments

Hearing officer's single most critical complaint about the change in the system as proposed is that, on many fronts, it will have a disproportionately negative effect on certain types of consumers whose rights the Board goes out of its way to assure are protected.

The Board sees a diverse population. One hearing might be with a resident of Beverly who comes represented by counsel, with photographs, charts and computer printouts while the very next one might be with an appellant who speaks little English and brings only a friend as an interpreter to assist in assuring all parties understand all matters relevant to the fair adjudication of the matter at issue. We, as hearing officer's, do not believe that the alternative review process offered to consumers will afford all parties equally the opportunity to have an unfavorable determination fairly assessed on only the facts of the accident as it occurred and without inappropriate factors improperly seeping into what should be a pure process. The same can be said of the use of the courts as final avenue for redress as costs and capacity to negotiate the system may leave this option for only the wealthier and/or better educated members of the driving public. Additionally, we feel that at fault determinations might be manipulated by insurance carriers as a method of retaining customers whose business they do not wish to lose while using the same to drive away customers a carrier might not mind or even prefer to no longer insure.

It is most difficult to hear the Commissioner's unequivocal belittlement of the functions of the Board and the work its employees have chosen to so dedicate themselves to. Toward the goal of participating in the process please find a list of issues/questions the Chairman may wish to incorporate in his questioning.

Hearing Questions

Fundamental to the issue at hand is the question as to what is the relationship between competitive rates setting and having a determination of fault contested before an independent third party? While a competitive rate based system allows insurance carriers greater flexibility as to how to treat an at fault determination as it relates to one's premium, there seems to be no relationship between what a company does with a at fault determination (what penalty they assess and for how long) and the issue who is at fault for why two cars were in contact. It would seem you could have on without the other, neither, or even better, both. What it appears is that the Commissioner is using the change to managed competition and the wording in the Board's enabling statute that was not written to foresee a move from fixed rates as an opportunistic attempt to dispose of the Board. Isn't it her responsibility to protect consumers of the Commonwealth from the actions of insurance carriers? What is the benefit to a process without the Board?

The commissioner has caller the Board's appeal process "costly and in efficient". With the expenses of the Board industry funded and income generated by the $50 user fee ($2,500,000), what is the basis for this characterization?

If "costly" refers to the $50 fee paid to get a hearing, is the Commissioner not in control of determining the amount that is charged individuals using the Board: If the Board is to continue, should the fee be lowered or removed.

If "inefficient" means the 6-8 months it takes for an appellant to be heard, is she not in control of the number of hearing officer's the Board is free to employee at any given time? Is the 6-8 months and $50 fee being compared to use of the court system, its timetables and expense?

Note that each hearing officer conducts 25 hearing 4 days a week. This amounts to each hearing officer conducting + or - 5,000 hearings per year. The number of hearings conducted by the Board any given year is thus 5,000 times the number of hearings officer's employed. If more hearings come in than can be processed by those conducting hearings, we fall behind. If fewer hearings are requested than hearing officer's process, we work down the backload. It is and has at all times been the commissioner who controls the staffing of the board. Simply put, backlogs occur when the Board is understaffed and not authorized to hire. No understaffing, no backlog.

How can one characterize the resolution of 25 disputes between consumers and their insurance carrier each day by an industry funded Board and the day wage of an insurance company employee (or representative), as "inefficient" especially when viewed against its alternative, litigation of the dispute in court?

Note that it costs more to serve ones insurance carrier with litigation papers then it does to file for a hearing before the Board. Add to it the expense of filing the suit, multiple court appearances, an unbalanced fight against an insurance company attorney or the cost of hiring one's own to even the playing field.

Note also that the hearing process before the Board is a relatively simply, easily manageable process that invites use by any who feel aggrieved. The same cannot be said about the courts that some might find intimidating and/or cost prohibitive (especially considering amounts that are dispute).

As a former Superior Court Judge, does the Commissioner feel due process is served by taking appeals out of the hands of the Board, an independent court of competent jurisdiction, and placing the review in the control of the same profit driven corporate entity who made the disputed finding. Isn't the lack of impartiality at all troubling? While approximately half the appellant's who come before the Board are unsuccessful in their attempt to have their decision overturned, it has and remains important to the Board that all who come before it feel they were heard, allowed to see/hear the information from which the disputed decision was made and that the process was fairly administered by an uninterested arbiter governing the hearing and asking questions geared to gleaning from appellants facts relevant to the making of a just decisions.

When the Commissioner says that the motivation an insurance carrier has to overturn a decision they previously made is that they are in the business of keeping customers, does this not by definition mean that a carriers determination as to how much they desire to retain said customer then become a factor in determining whether he is found "at fault" for an accident. Should not an "at fault" determination be made solely on the facts of the accident and laws governing the rules of the road?

And if the desire to keep a good customer (one with multiple cars, a homeowners policy, etc.) is the incentive to overturn a previous at fault finding, will not the opposite be true of a customer a company would not mind (or even desire) take his business elsewhere? Does this not open the door to endless possibilities of abuse/discriminatory practice by insurance companies that the presence of the Board significantly curtail?

Might the end result of all this being the possibility of ones driving record will indicate how good a customer one is to his carrier while skewing its purity as a measure of ones ability to drive and obey laws. Might, over time, this have public safety ramifications whereby "good customers" have driving records that indicate they are better drivers then they really are while "take them or leave them customers" will display records that make then appear to be a greater risk then truly are?

Under Commissioner's plan insurance companies will have a strong incentive to adjust driving records for favored customers to gain competitive advantage. A major goal of the Safe Driver Insurance Plan is to save money, prevent injury and save lives by creating a financial incentive for safe driving. Won't the Commissioner's plan hurt this goal by allowing companies to overlook accidents for favored insureds who were actually fault?

A no cost "review" option will be exercised by nearly all insured regardless of the presence of merit to support the request. Would not the flood of reviews that will inevitably ensue dilute the resources of insurance companies and negatively affect the attention a meaningful review might receive and require?

A 30 day turn around time coupled with the locations of the home offices of insurance carriers in and out of the state means that the appeal will not likely be a face-to-face or involve a question and answer format and there will be no hearing the likes of which the Board of Appeal provides. While one might be able to submit a statement making an argument or provide supporting documentation to the review, would not decisions made on these alone always disproportionately negatively affect those with less ability to author and produce a compelling presentation that speaks for itself.
The Commissioners stated "shop around/take your business elsewhere" theory with regard to feeling you have been wrongly assessed a premium increase is fundamentally flawed as it requires you to do the shopping after an "at fault" blemish taints your record. In contrast, the Board of Appeal allows you to both keep your record free of an accident in which you were not at fault <u>and</u> change companies from the one who wrongly increased your premium without the offending determination on your record for premium shopping purposes in a competitive market.

The Commissioner has stated that she finds competition and shopping sufficient to protect the rights of auto insurance policy holders? Does she also believe that if we closed the courts, businesses desire to attract customers would be enough to ensure that contractors finish the work they start on your house, companies manufacture safe products, landlords return your security deposit and businesses treat consumers fairly in thousands of other consumer transactions?

"Accident Forgiveness" is being tossed around as the answer to many real or perceived flaws in the new system. How does it work? Who is it offered to? What percentage of consumers while be afforded the benefits of it? Does the accident forgiven, still get reported at as an at fault event to the Merit Rating Board? Is only the premium increase associated with the at fault accident forgiven but not its at fault character for driving record purposes? Does any future company one is later insured with have to respect the forgiven accident for rate setting purposes or does the fact that ones present company forgave an accident essentially tie the consumer to the company because any other will see it as a flaw on ones record for premium setting purpose?

For the purpose of explanation, accident forgiveness may turn out to be a misnomer as it may forgive only the rate increase associated with the incident, not its at fault character on one's driving record. Such a practice, for example, means that a present or future truck driver, salesmen, heavy equipment operator, police officer, etc., whose job might require a clean record, does have an at fault incident on it for all purposes other his present rate. The same can also be said about how a future carrier may view an incident forgiven by a previous carrier.

Note also that the benefits of accident forgiveness are generally being offered to only those who possess stellar driving records with additional qualifications like the need to have been with the offering company over 6 years. This means only a chosen few will likely reap the benefit of it. For the purpose of analogy, think of the "qualified buyer" who actually gets a vehicle financed at 0%. Other companies offer it as an option that can be purchase with a policy like towing coverage. Like it, if you don't buy it, you don't get it and its paid for whether you end up using it or not and cannot be bought to retroactively affect an earlier incident. And putting all this aside, it should be no consolation to a consumer that a company forgave an incident to which he believes he was not at fault. Accident forgiveness is thus only meaningfully beneficial when a truly at fault incident is forgiven for both rate and driving record purposes.

The same statutory wording that jeopardizes the future of the BOA, does away with the Safe Driver Insurance Plan. Without the SDIP there will be neither universal regulation that assure insurance carriers will treat similar situations similarly in making the first determination nor universal procedures for effectuating internal reviews. Doesn't the end of the SDIP plan make the Board's function even more critical as a mechanism to assure like cases are treated similarly?

Regulations defines a surcharge as part of the Safe Driver Insurance Plan (SDIP) which will no longer be used under competition. Massachusetts law currently requires driver

training and license suspension for drivers with 3, 5 and 7 surchargeable incidents. What steps have been taken to ensure that this mechanism for getting bad drivers trained and off the road will continue to operate?

Commercial drivers and everyone who needs their vehicle for work can lose their job based on their driving history. Is it fair to people who depend on their license to work to take away their right to an impartial appeal and give control of their driving record to an insurance company?

While a change to competitive rates may turn out to positively affect rates offered certain drivers, Commissioner Burnes' abolishment of the Board of Appeal serves as an invitation to insurance carriers who will only come to this state if their actions cannot be meaningfully reviewed by the Board. This begs the question as to whether consumers of the Commonwealth truly benefit from the extension of an invitation to companies moved only by the removal of meaningful regulation.

If this becomes law can the Commissioner envision any scenario in which the right to appeal to the Board would not continue? What does the Division of Insurance believe the law must read to make certain that it's intent that the 30A appeals process must continue under competition is clear and fully implemented?

The sponsors of the bills being discussed intend to continue the right of auto policy holders to bring their appeal to the Board of Appeal if they think they have been wrongly found at fault. As the chief regulator of insurance matters for the state but one who has stated unequivocally that the Board not necessary or useful in the current system, does the Commissioner feel that she can and will be able to put her personal beliefs aside and effectuate the purpose of the legislation.

In light of her stated position on the matter, can she properly steward the Board by interpreting the bill in such a way as to fully accomplishing its legislative purpose?

Does the Commissioner feel that the Board would be better if it were divorced from the Division of Insurance? Should it be an autonomous entity or housed with or in another agency? Is this an issue that might or should be considered by legislators in the future?

COMMONWEALTH OF MASSACHUSETTS
Office of Consumer Affairs and Business Regulation
DIVISION OF INSURANCE
One South Station • Boston, MA 02110-2208
(617) 521-7794 • FAX (617) 521-7475
TTY/TDD (617) 521-7490
http://www.mass.gov/doi

DEVAL L. PATRICK
GOVERNOR

TIMOTHY P. MURRAY
LIEUTENANT GOVERNOR

GREG BIALECKI
SECRETARY OF HOUSING AND ECONOMIC DEVELOPMENT

NONNIE S. BURNES
COMMISSIONER OF INSURANCE

CONTACT:
Jason Lefferts
(617) 973-8767
(617) 930-4578

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Statement from Nonnie S. Burnes, Commissioner of the Massachusetts Division of Insurance

"Over the last year, the Division of Insurance has made a number of changes as a part of introducing managed competition to the Massachusetts auto insurance market. These efforts were focused on creating a consumer-focused environment for drivers to shop for, and buy, auto insurance. Throughout the year, six new insurance companies have entered the state to write auto insurance and created hundreds of jobs. As a result of the transition to managed competition, the market now offers consumers more choices, lower rates, greater flexibility, and ultimately the opportunity to find the best insurance.

As a part of these changes, the Division of Insurance proposed an alternative means of addressing at-fault accidents and accident disputes to replace the Board of Appeals as currently structured. We had every confidence that this new plan would protect consumers and offer them a fair resolution; however, we have heard the concerns voiced by the general public. Responding to those concerns, today we are announcing that we are maintaining the Board of Appeals and its accident resolution review process. We look forward to continuing the progress that managed competition has already demonstrated and ensuring consumers experience every benefit the competitive market has to offer."