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House Engrossed Senate Bill

FILED

Jane Dee Hull
Secretary of State

State of Arizona
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CHAPTER 144

SENATE BILL 1158

AN ACT

AMENDING SECTIONS 20-1631, 20-1632 AND 20-1633, ARIZONA REVISED STATUTES; RELATING TO CANCELLATION OR NONRENEWAL OF MOTOR VEHICLE INSURANCE.

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 20-1631, Arizona Revised Statutes, is amended to read:

20-1631. Definition; cancellation of or failure to renew coverage; limitations; limitation of liability; exceptions; agents of record

A. In this article, unless the context otherwise requires, "motor vehicle" means a licensed land, motor-driven vehicle but does not mean:

1. A private passenger or station wagon type vehicle used as a public or livery conveyance or rented to others.

2. Any other four-wheel motor vehicle of a load capacity of fifteen hundred pounds or less which is used in the business of transporting passengers for hire, used in business primarily to transport property or equipment, used as a public or livery conveyance or rented to others.

3. Any motor vehicle with a load capacity of more than fifteen hundred pounds.

B. ~~No insurance company~~ AN INSURER shall NOT cancel or refuse to renew a motor vehicle insurance policy solely because of the age, race, color, religion, sex, national origin or ancestry of anyone who is an insured.

C. An ~~insurance company~~ INSURER shall not issue a motor vehicle insurance policy in this state unless the cancellation and renewal conditions of the policy or the endorsement on the policy ~~includes~~ INCLUDE the ~~following~~

limitations ~~pertaining to cancellation and renewal by such company~~ REQUIRED BY THIS SECTION. After ~~this~~ A policy ISSUED IN THIS STATE has been in effect for sixty days, or if the policy is a renewal, effective immediately, the company shall not exercise its right to cancel or fail to renew the insurance afforded under ~~(insert coverages)~~ THE POLICY unless:

1. The named insured fails to discharge when due any of the obligations of the named insured in connection with the payment of premium for this policy or any installment of the premium.

2. The insurance was obtained through fraudulent misrepresentation.

3. The named insured, any person who resides in the same household as the named insured and customarily operates a motor vehicle insured under the policy or any other person who regularly and frequently operates a motor vehicle insured under the policy:

(a) Has had his or her driver's license suspended or revoked during the policy period.

(b) Becomes permanently disabled, either physically or mentally, and such individual does not produce a certificate from a physician testifying to such person's ability to operate a motor vehicle.

(c) Is or has been convicted during the thirty-six months immediately preceding the effective date of the policy or during the policy period of:

(i) Criminal negligence, resulting in death, homicide or assault, arising out of the operation of a motor vehicle.

(ii) Operating a motor vehicle while in an intoxicated condition or while under the influence of drugs.

(iii) Leaving the scene of an accident.

(iv) Making false statements in an application for a driver's license.

(v) Reckless driving.

4. The ~~insurance company~~ INSURER is placed in rehabilitation or receivership by the insurance supervisory official in its state of domicile or by a court of competent jurisdiction or the director has suspended the insurer's certificate of authority based on its financially hazardous condition.

5. The named insured, any person who resides in the same household as the named insured and customarily operates a motor vehicle insured under the policy or any other person who regularly and frequently operates a motor vehicle insured under the policy uses a motor vehicle rated or insured under the policy as a private passenger motor vehicle regularly and frequently for commercial purposes.

6. The director determines that the continuation of the policy would place the insurer in violation of the laws of this state or would jeopardize the solvency of the insurer.

D. IN ADDITION TO THE AUTHORIZATION TO FAIL TO RENEW INSURANCE PROVIDED BY SUBSECTION C OF THIS SECTION, AN INSURER MAY EXERCISE ITS RIGHT TO FAIL TO RENEW A MOTOR VEHICLE INSURANCE POLICY PURSUANT TO THIS

SUBSECTION. AN INSURER SHALL PROVIDE NOTICE OF THE NONRENEWAL TO THE NAMED INSURED AS PRESCRIBED BY SECTION 20-1632 AT LEAST FORTY-FIVE DAYS BEFORE THE NONRENEWAL. A NAMED INSURED WHO DISPUTES THE NONRENEWAL OF THE NAMED INSURED'S POLICY MAY FILE AN OBJECTION WITH THE DIRECTOR PURSUANT TO SECTION 20-1633. AN INSURER SHALL NOT FAIL TO RENEW MORE THAN ONE-HALF OF ONE PER CENT OF ITS POLICIES ANNUALLY PURSUANT TO THIS SUBSECTION. AN INSURER MAY FAIL TO RENEW A MOTOR VEHICLE INSURANCE POLICY IF THE NAMED INSURED, ANY PERSON WHO RESIDES IN THE SAME HOUSEHOLD AS THE NAMED INSURED AND WHO CUSTOMARILY OPERATES A MOTOR VEHICLE INSURED UNDER THE POLICY OR ANY OTHER PERSON WHO REGULARLY AND FREQUENTLY OPERATES A MOTOR VEHICLE INSURED UNDER THE POLICY HAS HAD AT ANY TIME DURING THE THIRTY-SIX MONTHS IMMEDIATELY BEFORE THE NOTICE OF NONRENEWAL THREE OR MORE AT-FAULT ACCIDENTS IN WHICH THE PROPERTY DAMAGE PAID BY THE INSURER FOR EACH ACCIDENT WHICH OCCURRED PRIOR TO JANUARY 1, 2000, IS MORE THAN ONE THOUSAND EIGHT HUNDRED DOLLARS. FOR ACCIDENTS OCCURRING AFTER JANUARY 1, 2000, THE DEPARTMENT OF INSURANCE SHALL ANNUALLY ADJUST AND PUBLISH, TO THE NEAREST TEN DOLLARS, THE THRESHOLD AMOUNT OF PROPERTY DAMAGES IN THIS SUBSECTION BY THE PERCENTAGE CHANGE IN ALL ITEMS COMPONENT OF THE CONSUMER PRICE INDEX FOR ALL URBAN CONSUMERS OF THE UNITED STATES DEPARTMENT OF LABOR, BUREAU OF LABOR STATISTICS. THE INSURER SHALL NOT EXERCISE ITS RIGHT TO FAIL TO RENEW THE INSURANCE UNDER THIS SUBSECTION UNLESS THE SAME INDIVIDUAL HAS HAD ALL THE ACCIDENTS THAT MAKE THE POLICY SUBJECT TO NONRENEWAL UNDER THIS SUBSECTION. THE INSURER SHALL NOT EXERCISE ITS RIGHT TO FAIL TO RENEW A MOTOR VEHICLE INSURANCE POLICY PURSUANT TO THIS SUBSECTION DUE TO THE ACCIDENT RECORD OF THE NAMED INSURED IF THE NAMED INSURED HAS BEEN INSURED FOR STANDARD AUTOMOBILE BODILY INJURY COVERAGE FOR AT LEAST TEN CONSECUTIVE YEARS WITH THE SAME INSURER PRIOR TO THE MOST RECENT ACCIDENT THAT MAKES THE POLICY SUBJECT TO NONRENEWAL UNDER THIS SUBSECTION. FOR PURPOSES OF THIS SUBSECTION, "AT-FAULT" MEANS THE INSURED IS AT LEAST FIFTY PER CENT RESPONSIBLE FOR THE ACCIDENT.

~~D.~~ E. The company shall not cancel or fail to renew the insurance when a person other than the named insured has violated subsection C, paragraph 3 of this section, OR FAIL TO RENEW THE INSURANCE PURSUANT TO SUBSECTION D OF THIS SECTION DUE TO THE DRIVING RECORD OF AN INDIVIDUAL OTHER THAN THE NAMED INSURED, if the named insured in writing agrees to exclude as insured the person by name when operating a motor vehicle and further agrees to exclude coverage to the named insured for any negligence which may be imputed by law to the named insured arising out of the maintenance, operation or use of a motor vehicle by the excluded person.

~~E.~~ F. The provisions of subsection C of this section~~,~~ do not apply to any policy which has been in effect less than sixty days at the time notice of cancellation is mailed or delivered by the insurer unless the policy is a renewal policy, or to policies:

1. Insuring any motor vehicle other than a private passenger motor vehicle as defined in section 20-117.

2. Insuring the motor vehicle hazard of garages, motor vehicle sales agencies, repair shops, service stations or public parking places.

3. Providing insurance only on an excess basis.

~~F.~~ G. If a consumer purchases motor vehicle insurance coverage from an agency or agent licensed in this state, the agency or agent, whichever owns the policy expiration, shall remain the agent of record for that insured. In the event the insurer terminates the agency's contract, the agency shall continue to provide customary services to the insured. The insurer shall provide the agency with a minimum degree of authority necessary to provide customary services to the insured and shall provide the same level of compensation for these services which were in effect prior to the termination of the agency contract.

~~G.~~ H. Subsection ~~F.~~ G of this section shall not apply if one or more of the following conditions exist:

1. The agent of record has had its license suspended or revoked by the department.

2. The agent of record is indebted to the insurer.

3. The insured has supplied the insurer with a written request that its agent of record be changed to another agent of the insurer.

4. The agent of record has authorized transfer of this account to another licensed agent of the insurer.

5. The director has determined after a public hearing that continuation of this relationship is not in the best interest of the public.

6. The agent of record is under an exclusive contract or contract requiring the agent to submit all eligible business to an insurer or group of insurers under a common management.

~~H.~~ I. Subsection ~~F.~~ G of this section shall not apply to any transaction in which the expiration of the policies is owned by the insurer.

~~I.~~ J. Notwithstanding any law to the contrary, the issuance at renewal of revised policy provisions to modify an existing policy BY ADDING COVERAGES OR POLICY PROVISIONS, MODIFYING COVERAGES OR POLICY PROVISIONS, OR ELIMINATING COVERAGES OR POLICY PROVISIONS is not a nonrenewal or cancellation of the ~~revised~~ policy ~~provisions if they are approved by the director pursuant to section 20-398.~~ IF THE MODIFICATION OF A BASIC COVERAGE DOES NOT ELIMINATE THE ESSENTIAL BENEFIT OF THAT BASIC COVERAGE. IF THE MODIFICATION OF THE BASIC COVERAGE ELIMINATES THE ESSENTIAL BENEFIT OF THE BASIC COVERAGE, THE DIRECTOR SHALL ORDER THE INSURER TO REMOVE THE MODIFICATION FROM THE POLICY. This subsection does not allow the insurer, without the written consent of the insured, to eliminate the BASIC coverages of the policy or to reduce the monetary limits of any of the BASIC coverages of the policy that were selected and agreed on. This subsection does not limit a policyholder from continuing to renew uninsured or underinsured motorist coverage pursuant to section 20-259.01. FOR THE PURPOSES OF THIS SUBSECTION, "BASIC COVERAGE" MEANS ANY OF THE FOLLOWING:

1. BODILY INJURY COVERAGE.
2. PROPERTY DAMAGE COVERAGE.
3. UNINSURED MOTORIST COVERAGE.
4. UNDERINSURED MOTORIST COVERAGE.
5. MEDICAL PAYMENTS COVERAGE.
6. COMPREHENSIVE COVERAGE.
7. COLLISION COVERAGE.

~~J.~~ K. For purposes of this section "fail to renew" OR "NONRENEWAL" does not include the issuance and delivery of a new policy within the same insurer or an insurer under the same ownership or management as the original insurer as provided in this subsection. An insurer may transfer one per cent of its policies to an affiliated insurer within one calendar year if one or more of the policyholders that are insured under the policies that are to be transferred have within the past thirty-six months each had two or more at-fault accidents in which the property damage paid by the insurer for each accident exceeded one thousand five hundred dollars or have had five or more moving violations, provided that no accidents or moving violations which occurred before August 1, 1994 shall be counted in making such determination. A company shall not transfer a policy if the named insured agrees in writing to exclude as an insured a person or persons other than the named insured who meets the criteria for transfer pursuant to this subsection and further agrees to exclude coverage for any negligence which may be imputed by law to the named insured arising out of the maintenance, operation or use of a motor vehicle by such excluded person or persons. The one per cent limit set forth ~~herein~~ IN THIS SUBSECTION shall not apply to transfers of policies from the original insurer to another insurer under the same ownership or management as the original insurer if the rates charged by the other insurer are lower than the rates charged by the original insurer. No ~~insurance company~~ INSURER shall transfer policyholders because of age, race, color, religion, sex, national origin or ancestry. Transfers by an insurer pursuant to this subsection shall not be construed to permit a new unrestricted sixty day period for cancellation or nonrenewal.

Sec. 2. Section 20-1632, Arizona Revised Statutes, is amended to read:

20-1632. Notices to insured; refund of unearned premium

A. A notice by the insurer to the policyholder of ~~non-renewal~~ NONRENEWAL, cancellation or reduction in the limits of liability or coverage shall be mailed to the named insured by certified mail or United States post office certificate of mailing at least ten days prior to the effective date of such ~~non-renewal~~ NONRENEWAL, cancellation or reduction in limits of liability or coverage, EXCEPT THAT NOTICE OF NONRENEWAL UNDER SECTION 20-1631, SUBSECTION D SHALL BE MAILED AT LEAST FORTY-FIVE DAYS BEFORE THE EFFECTIVE DATE OF THE NONRENEWAL. Such notice shall include or be accompanied by all of the following:

1. A statement in writing of the specific facts which constitute the reasons, consistent with section 20-1631, for such action by the insurer and a notice indicating the named insured's right to complain to the director of the insurer's action within ten days after receipt of the notice by the insured.

2. Notice of the insured's possible eligibility for insurance through the automobile assigned risk plan, and the notice shall state that all information included in the notice is given pursuant to this article.

3. A refund of unearned premium, except a premium that has been financed.

B. Failure of the insurer to comply with subsection A OF THIS SECTION shall invalidate any cancellation, ~~non-renewal~~ NONRENEWAL or reduction in limits of liability or coverage, except a cancellation or ~~non-renewal~~ NONRENEWAL for nonpayment of premium.

C. If a premium has been financed, a refund of unearned premium shall be returned as provided in section 6-1416.

Sec. 3. Section 20-1633, Arizona Revised Statutes, is amended to read:

20-1633. Objections; investigation; determination

A. Any individual who believes cancellation or ~~non-renewal~~ NONRENEWAL of ~~his~~ THE INDIVIDUAL'S policy is arbitrary, capricious or otherwise in violation of this article or who believes notice of ~~non-renewal~~ NONRENEWAL or cancellation, or the reasons therefor, were not given as provided by this article may, within ~~seven~~ TEN days after receipt of notice thereof, file in writing an objection to such action with the director.

B. ANY INSURED WHO BELIEVES AN INSURER HAS MADE AN INCORRECT DETERMINATION OF FAULT IN AN ACCIDENT CONTRIBUTING TO NONRENEWAL OF A POLICY UNDER SECTION 20-1631, SUBSECTION D, MAY, WITHIN TEN DAYS AFTER RECEIPT OF NOTICE OF THE NONRENEWAL UNDER THAT SECTION, FILE IN WRITING AN OBJECTION TO THE NONRENEWAL WITH THE DIRECTOR.

~~B.~~ C. Upon receipt of a written objection pursuant to the provisions of this article, the director shall notify the insurer of receipt of such objection and of the right of the insurer to file a written response thereto within ten days of receipt of such notification. The director in his discretion may also order an ~~investigation~~ EXAMINATION of the objection or complaint, the submission of additional information by the insured or the insurer about the action by the insurer or the objections of the insured, or such other procedure as he deems appropriate or necessary. THE INSURER SHALL PAY THE COST OF THE EXAMINATION PURSUANT TO SECTION 20-159. Within fifteen days of receipt of such written objection by an insured the director shall approve or disapprove the insurer's action and shall notify the insured and insurer in writing of his final decision. THE DIRECTOR SHALL ORDER AN INSURER THAT HAS FAILED TO RENEW A POLICY IN VIOLATION OF SECTION 20-1631 TO REINSTATE THE POLICY RETROACTIVE TO THE EFFECTIVE DATE OF THE NONRENEWAL. Either party may institute proceedings for judicial review of the director's

1 decision pursuant to section 20-166. NOTWITHSTANDING ANY OTHER LAW, IF THE
2 DIRECTOR DECIDES IN FAVOR OF THE INSURED, THE DIRECTOR MAY ORDER THAT THE
3 DECISION NOT BE STAYED PENDING JUDICIAL REVIEW.
4 Sec. 4. Notification
5 An insurer offering motor vehicle insurance described by this act shall
6 include with each renewal notice or premium billing statement issued between
7 January 1, 1997, and January 1, 1998, a statement in a form prescribed by the
8 director which clearly describes the additional conditions under which an
9 insurance policy may be nonrenewed pursuant to this act.
10 Sec. 5. Delayed repeal
11 Section 4 of this act is repealed from and after January 1, 1998.
12 Sec. 6. Applicability
13 Section 1 of this act does not authorize policy nonrenewals based on
14 accidents that occurred before the effective date of this act.

APPROVED BY THE GOVERNOR APRIL 10TH 1996

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 11, 1996