



**STATE OF NEW YORK
INSURANCE DEPARTMENT
160 WEST BROADWAY
NEW YORK, NEW YORK 10013**

Circular Letter No. 15 (1994)
September 16, 1994

TO: All Insurers Authorized To Write Motor Vehicle Insurance In New York State And Insurance Producer Organizations

Re: Prohibition Of Surcharges On Personal Automobile Insurance Policies For Accidents By Police Officers, Firefighters And Peace Officers While On Duty

Some insurers may be inappropriately applying surcharges to the personal automobile policies of police officers, firefighters, and peace officers who have accidents while operating an official vehicle in performance of their duties. The purpose of this Circular Letter is to alert insurers that such surcharges would under most circumstances violate the provisions of Section 2335(c) and (d) of the Insurance Law and Regulation 100 [11 NYCRR 169.1(d)(1)(iv) and (vii)].

Pursuant to these statutory and regulatory provisions, insurers cannot surcharge a personal automobile insurance policy where the insured or other operator was operating:

- (1) a motor vehicle in response to an emergency, responding to a call to duty as a paid or volunteer member of any police or fire department or first aid squad; or
- (2) a motor vehicle while performing other functions on behalf of the state, any political subdivision thereof, a public authority, public benefit corporation, or any other governmental agency or instrumentality in a public emergency; or
- (3) a commercial vehicle in the course of employment and in the discharge of the employee's duties at the time of the accident, unless the accident is determined to have been caused by the intentional action or gross negligence of the insured.

For purposes of item (3), a commercial vehicle includes, among others, an official vehicle when operated in an official capacity by a police officer, firefighter or peace officer. The Vehicle and Traffic Law defines a commercial vehicle as a motor vehicle used for business purposes and excludes police and fire vehicles from that definition for purposes of registration only.

Therefore, a police officer, a firefighter, or a peace officer while operating an official vehicle as an employee in the course of employment is exempt from surcharges on that individual's own personal motor vehicle insurance policy premium on the same basis as any other person employed by a commercial business.

Please acknowledge receipt of this Circular Letter in writing to:

Alan Goren, Senior Examiner
Property & Casualty Insurance Bureau

New York State Insurance Department
160 West Broadway
New York, New York 10013

T: (212) 602-0341
F: (212) 602-8825

Insurers should disseminate the above information to sales, underwriting and other relevant personnel, including producers, as soon as possible. Insurers should also review merit rating plans, rating rules, and internal procedures to ensure compliance. Please direct any questions about this Circular Letter to Mr. Goren.

Very truly yours,

Salvatore R. Curiale
Superintendent of Insurance