



**STATE OF NEW YORK
INSURANCE DEPARTMENT**
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**Circular Letter No. 12 (2003)
August 14, 2003**

TO: ALL INSURERS AUTHORIZED TO WRITE MOTOR VEHICLE INSURANCE IN NEW YORK STATE; RATE SERVICE ORGANIZATIONS; AND INSURANCE PRODUCER ORGANIZATIONS

RE: NON-BUSINESS "AUTOMOBILE INSURANCE" POLICIES: NONRENEWAL AND CONDITIONAL RENEWAL PROVISIONS, CANCELLATION PROVISIONS, AND MULTI-TIERING PROVISIONS

STATUTORY REFERENCES: SECTIONS 2349 AND 3425 OF THE INSURANCE LAW; CHAPTER 85 OF THE LAWS OF 2003

The purpose of this circular letter is to provide guidance regarding the application of certain provisions of Section 2349 and Section 3425 of the New York Insurance Law (NYIL) that apply to "automobile insurance" policies, as defined in Section 3425(a)(1), issued or renewed before and after the enactment of Chapter 85 of the Laws of 2003 on June 26, 2003. The affected policies cover motor vehicles used primarily for non-business purposes, other than policies issued by the New York Automobile Insurance Plan pursuant to NYIL Article 53. This circular letter supersedes Circular Letter No. 21 (2001) dated August 8, 2001 and the supplement thereto dated September 20, 2001. Accordingly, Circular Letter No. 21 (2001) and the supplement thereto are hereby withdrawn.

A. Renewal of policies in effect prior to August 2, 2001 and policies newly written or voluntarily renewed on or after June 26, 2003

Automobile policies originally written prior to August 2, 2001 and policies newly written or voluntarily renewed on or after June 26, 2003 are governed, for purposes of nonrenewal and conditional renewal, by those Section 3425 provisions applicable to "automobile insurance", as defined and provided for in paragraphs (1), (8), and (9) of Section 3425(a). Nonrenewals and conditional renewals of such policies are subject to the two-percent limitations provided for in Section 3425(f) and are not subject to the provisions of Section 3425(m).

The rights of an insured to continue coverage through a terminated insurance agent or broker, for policies subject to the two-percent limitations, are set forth in Section 3425(j)(1)(B).

B. Policies that were newly written on or after August 2, 2001 and prior to June 26, 2003

New policies voluntarily written with an effective date on or after August 2, 2001 and prior to June 26, 2003 remain subject to a three-year "required policy period", as that term is defined in paragraph (7) of Section 3425(a), and are not subject to the two-percent limitations provided for in Section 3425(f). Section 3425(m)(3) applies to such policies, and lists the permissible grounds for nonrenewal or conditional renewal of such policies during the required policy period. Renewals after the expiration of the three-year required policy period will bring the policy under the two-percent limitations provided for in Section 3425(f) and subject to all the other requirements applicable to policies newly written on or after June 26, 2003 (See A. above).

For example, a policy issued on June 25, 2003 is subject to a three-year required policy period provided for in Section 3425(a)(7) ending June 25, 2006 after which, upon renewal, it will be subject to a one-year required policy period and the two-percent limitations provided for in Section 3425(f).

The rights of an insured to continue coverage through a terminated insurance agent or broker, for policies subject

to the three-year required policy period, are set forth in Section 3425(j)(1)(A).

C. Policies subject to multi-tiering programs

An insurer may apply the two-for-one rule to implement a nonrenewal or conditional renewal for business written subject to the two-percent limitations (i.e., policies that were originally written prior to August 2, 2001 and policies that are newly written or voluntarily renewed on or after June 26, 2003). Pursuant to Regulation No. 150 (11 NYCRR 154), an insurer may apply the three-percent limit rule to implement an uptier increase for all business, regardless of the dates the policies were newly written or renewed. Therefore:

1. An insurer may, each year, nonrenew or conditionally renew two percent of its business written subject to the two-percent limitations based upon the total number of the insurer's covered policies in force at last year's-end in each of the insurer's rating territories in use in this state, and may uptier three percent of all of its business, based upon the total number of covered policies of the insurer in force at last year's-end in each of the insurer's rating territories in use in this state.

2. An insurer may either nonrenew or conditionally renew one additional policy written in a territory subject to the two-percent limitations, in excess of the two-percent limit, for every two new automobile policies written in that territory, or may uptier one additional policy in a territory, regardless of when written, in excess of the three-percent limit, for every two new automobile policies written in that territory.

D. Cancellations

Cancellations of all non-business automobile insurance policies continue to be subject to the provisions of Section 3425(b) and (c)(1).

E. Section 3425 Compliance Report

Because of the different nonrenewal and conditional renewal standards that are now in effect, insurers should maintain appropriate records, differentiating those policies subject to the two-percent limitations and those policies subject to the three-year required policy period. It is essential that the data obtained from insurers be accurate, as analysis of this data is incorporated into the Insurance Department's report to the Legislature pursuant to Section 3425(l). To facilitate insurers' timely and accurate preparation and submission of data in the Section 3425 Compliance Report due April 30, 2004, the report format and instructions have already been posted to the "Property Bureau Data Calls" page of the Department's Web site at <http://www.ins.state.ny.us/acrobat/3425f-04.xls>

Any questions or problems concerning this subject may be directed to Epstein Lu, Senior Insurance Examiner, Property Bureau, at the above address or by e-mail at elu@ins.state.ny.us.

Very truly yours,

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