



STATE OF NEW YORK
INSURANCE DEPARTMENT
25 BEAVER STREET
NEW YORK, NEW YORK 10004

David A. Paterson
Governor

James J. Wrynn
Superintendent

Circular Letter No. 15 (2010)
October 4, 2010

TO: All Insurers Authorized to Write Motor Vehicle Insurance in New York State (“Motor Vehicle Insurers”); the New York Automobile Insurance Plan; Rate Service Organizations; and Insurance Producers

RE: Minimum Property Damage Threshold for Increasing Motor Vehicle Policy Premiums

STATUTORY REFERENCES: New York Insurance Law §§ 2334, 2335 and 2349 and 11 NYCRR Part 169 (Regulation 100)

The purpose of this Circular Letter is to provide guidance and clarification to motor vehicle insurers, the New York Automobile Insurance Plan (“NYAIP”), rate service organizations (“RSOs”), and insurance producers regarding Chapter 277 of the Laws of 2010, which amends Insurance Law § 2335 effective November 27, 2010.

On July 30, 2010, Governor David A. Paterson signed into law Chapter 277, which adds a new Insurance Law § 2335(a). This section prohibits an insurer from increasing an insured’s policy premium solely because the insured or any other person who customarily operates an automobile covered by the policy has had an accident that does not result in aggregate damage to property in excess of \$2,000. However, the insurer may impose a surcharge if the accident results in bodily injury or if an insured has more than one accident in the insurer’s filed and approved merit rating experience period.

Presently, § 169.1(a) of 11 NYCRR 169 (Regulation 100) ties the minimum property damage threshold for which an automobile insurer may impose a premium surcharge to the compulsory accident reporting threshold set forth in Vehicle and Traffic Law § 605(a)(1). Vehicle and Traffic Law § 605(a)(1) requires the operator of a motor vehicle to report to the Commissioner of Motor Vehicles, among other things, any accident in which damage to the property of any one person is in excess of \$1,000. As a result of Chapter 277, the minimum property damage threshold is no longer linked to the compulsory accident reporting threshold set forth in Vehicle and Traffic Law § 605(a)(1). Accordingly, the Department is amending 11

NYCRR § 169.1(a) to reflect the amendment to Insurance Law § 2335. All other provisions of Regulation 100 will remain unchanged and are not impacted by the amendment to § 2335.

Furthermore, Insurance Law § 2335 prohibits any increase in the policy premium solely because of any one of the enumerated grounds. Therefore, the addition to Insurance Law § 2335 of the ground that the insured or any other person who customarily operates a motor vehicle covered by the policy has had an accident that does not result in aggregate damage to property in excess of \$2,000 means that the bar on premium increases applies not only to the imposition of surcharges in accordance with filed merit rating plans, but also to the loss, or a reduction in the amount, of “accident free” or “careful driver” discounts, and to uptiering in accordance with multi-tier rating programs. Accordingly, motor vehicle insurers, RSOs, and the NYAIP should review their rating plans, rules and classifications and file appropriate revisions as necessary for the Superintendent’s approval as soon as possible to comply with Chapter 277 by its effective date.

As previously noted, new § 2335(a) also provides that an insurer may surcharge for any accident that results in bodily injury. However, § 169.1(c) of Regulation 100 already permits an insurer to impose a surcharge for an occurrence involving bodily injury (including a no-fault injury subject to Article 51 of the Insurance Law), provided that the motor vehicle was in operation and the insured was at fault. The Department promulgated Regulation 100 pursuant to Insurance Law § 2334(a), which requires the Superintendent to establish standards and limitations intended to insure that merit rating plans are reasonable, understandable, and objective and are not unfairly discriminatory, inequitable, violative of public policy or otherwise contrary to the best interests of the people of New York. The Department does not construe the amendment to § 2335 to permit an insurer to impose a surcharge on an insured where the insured was not at fault or where the vehicle was not in operation, such as where an insured’s vehicle was hit while lawfully parked. There is nothing in the legislative bill memo to indicate that the Legislature intended to alter any provision of Regulation 100 other than with respect to the dollar threshold amount.

With respect to its effective date, Chapter 277 states that it applies “to policies entered into, modified, or renewed on or after” November 27, 2010. This means that regardless of when an accident may have occurred, the law applies as of November 27, 2010 any time that a policy is issued, renewed or modified. For purposes of Chapter 277, the Department defines “modification” as a change in the policy coverage or underlying risk characteristics that results in a revised policy premium. Examples of such a “modification” to a policy include the addition or removal of a vehicle, driver or any coverage under the policy, or a change in the principal garaging of the insured’s vehicle. Purely ministerial changes, such as alterations to the manner or timing of payment or corrections of typographical errors, would not constitute “modifications” to the policy within the meaning of Chapter 277.

Please direct any questions regarding this circular letter to Serge Moreau, Associate Insurance Examiner, at smoreau@ins.state.ny.us or (212) 480-5581.

Very truly yours,

Eugene Bienskie
Assistant Deputy Superintendent & Chief
Property Bureau