

**NEW YORK STATE
INSURANCE DEPARTMENT**

**FIRST AMENDMENT TO REGULATION NO. 68-A
(11 NYCRR 65-1)**

PRESCRIBED POLICY ENDORSEMENTS

I, James J. Wynn, Superintendent of Insurance of the State of New York, pursuant to the authority granted by Sections 201, 301, 2307, and 5103 of the Insurance Law, do hereby promulgate the following First Amendment to Subpart 65-1 of Title 11 of the Official Compilation of Codes, Rules and Regulations of the State of New York (Regulation No. 68-A), to take effect upon publication in the State Register to read as follows:

(Matter in bracket is deleted; new matter is underlined)

Subdivision (b) of Section 65-1.1 is amended to read as follows:

(b) An insurer shall provide the appropriate endorsement to be used with a policy. The Mandatory Personal Injury Protection Endorsement (New York) and the Mandatory Personal Injury Protection Endorsement - Motorcycles (New York) set out below are approved and promulgated for use by an insurer [and, except]. Except as provided in subdivision (c) of this section and section 65-1.7 of this Subpart, [must be:

(1) furnished to all new insureds with policies effective on and after September 1, 2001;
and

(2) enclosed with the first renewal policies renewed on and after September 1, 2001.] an insurer shall provide:

(1) the Mandatory Personal Injury Protection Endorsement (New York) to every insured with respect to a policy issued, renewed, modified, altered or amended on or after January 26, 2011; or

(2) the Mandatory Personal Injury Protection Endorsement - Motorcycles (New York) to every insured with respect to a motorcycle policy issued or renewed.

The "Exclusions" provision set forth in Subdivision (d) of Section 65-1.1 is amended to read as follows:

Exclusions

This coverage does not apply to personal injury sustained by:

(g) any person as a result of operating a motor vehicle while in an intoxicated condition or while his or her ability to operate [such] the vehicle is impaired by the use of a drug (within the meaning of section 1192 of the New York Vehicle and Traffic Law) except that coverage shall apply to necessary emergency health services rendered in a general hospital, as defined in section 2801(10) of the New York Public Health Law, including

ambulance services attendant thereto and related medical screening. However, where the person has been convicted of violating section 1192 of the New York Vehicle and Traffic Law while operating a motor vehicle in an intoxicated condition or while his or her ability to operate such vehicle is impaired by the use of a drug, and the conviction is a final determination, the Company has a cause of action against such person for the amount of first party benefits that are paid or payable;^{[2]3} or

(h) any person while:

- (1) committing an act which would constitute a felony, or seeking to avoid lawful apprehension or arrest by a law enforcement officer;²
- (2) operating a motor vehicle in a race or speed test;²
- (3) operating or occupying a motor vehicle known to that person to be stolen;² or
- (4) repairing, servicing or otherwise maintaining a motor vehicle if [such] the conduct is within the course of a business of repairing, servicing or otherwise maintaining a motor vehicle and the injury occurs on the business premises;^{[3]2}

Footnote 3 of Section 65-1.1 is amended to read as follows:

³ [These exclusions] This exclusion may be deleted, in the event the Company wishes to provide coverage under the indicated [circumstances] circumstance. Alternatively, the Company may delete the cause of action language only, provided, however, that, in either case, if the Company deletes this language, then the Company will be deemed to have waived its right to bring a cause of action against the person.

The “Exclusions” provision set forth in Subdivision (c) of Section 65-1.3 is amended to read as follows:

Exclusions

This coverage does not apply to personal injury sustained by:

(g) any person as a result of operating a motor vehicle while in an intoxicated condition or while his or her ability to operate [such] the vehicle is impaired by the use of a drug (within the meaning of section 1192 of the New York Vehicle and Traffic Law) except that coverage shall apply to necessary emergency health services rendered in a general hospital, as defined in section 2801(10) of the New York Public Health Law, including ambulance services attendant thereto and related medical screening. However, where the person has been convicted of violating section 1192 of the New York Vehicle and Traffic Law while operating a motor vehicle in an intoxicated condition or while his or her ability to operate such vehicle is impaired by the use of a drug, and the conviction is a final determination, the Company has a cause of action against such person for the amount of first party benefits that are paid or payable;^{[13]14} or

Footnotes 14 through 18 of Sections 65-1.3 and 65-1.4 are renumbered to be Footnotes 15 through 19, respectively. A new Footnote 14 is added to read as follows:

¹⁴ This exclusion may be deleted, in the event the Company wishes to provide coverage under the indicated circumstance. Alternatively, the Company may delete the cause of action language only, provided, however, that, in either case, if the Company deletes this language, then the Company will be deemed to have waived its right to bring a cause of action against the person.



STATE OF NEW YORK
INSURANCE DEPARTMENT
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I, James J. Wrynn, Superintendent of Insurance of the State of New York, do hereby certify that the foregoing is the First Amendment to Subpart 65-1 of Title 11 of the Official Compilation of Codes, Rules, and Regulations of the State of New York (Regulation No. 68-A), entitled "Prescribed Policy Endorsements", promulgated by me on April , 2011 pursuant to the authority granted by Sections 201, 301, 2307, and 5103 of the Insurance Law, to take effect upon publication in the State Register.

Pursuant to the provisions of the State Administrative Procedure Act, prior notice of the proposed regulation was published in the State Register on January 26, 2011. No other publication or prior notice is required by statute.

James J. Wrynn
Superintendent of Insurance

Dated: April , 2011