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BULLETIN

- TO:** All Admitted Tennessee Insurance Companies and Insurance Producers
- FR:** Paula A. Flowers, Commissioner
Department of Commerce and Insurance
- RE:** Notification of Rate or Rate Factor Increases on Commercial Risk Policies
- DT:** March 15, 2004

The Department has become aware that some admitted insurance companies and producers may not be providing proper and/or timely notification to their insured in the event the company intends to increase its rates and/or rating factors on commercial risk policies by more than twenty-five percent (25%). This Bulletin acts as a notification to all admitted insurance companies and producers of the Department's interpretation of the provisions of Tenn. Code Ann. § 56-7-1806.

56-7-1806. Revision of rates. – (a)(1) In the event an insurance company intends to revise the rates and/or factors included in the definition of “supplementary rate information” in § 56-5-302(10) of a commercial risk policy by an amount which is more than twenty-five percent (25%), the insurance company shall mail or deliver to the named insured and agent at the address shown in the policy not less than sixty (60) days' notice of its intention to increase the rates and/or factors, specifying the percentage of increase.

(2) Unless notice is provided as described above, the insurer is required to extend the existing policy sixty (60) days from the date such notice is provided.

(3) The premium for the policy provided in such circumstances shall be no more than a pro rata basis of the existing policy.

(b) The sixty-day notice and extension of policy requirements outlined in this section apply on and after January 1, 1987.

The Department interprets the above statute as requiring all admitted insurance companies that write commercial risk policies, other than fidelity or surety bonds, to notify their insured and producers any time an intended increase of any of the rates and/or rating factors of a policy exceeds twenty-five percent (25%). The required notice is to be given at least sixty (60) days prior to the effective date of the proposed increase, and must specify the exact percentage of increase which is intended. It is the Department's

position that if the insurance company's notice is timely, yet fails to specify the exact percentage of the intended increase, then the company is not authorized to increase the rates and/or rating factors of the policy until sixty (60) days after proper notice is given, whether before or after the policy renewal or anniversary date.

It is also the Department's position that the notification provision of this statute applies to each and every rate, after application of all rating factors, used in determining the final policy premium to be charged to the insured. Therefore, if any rate, after application of all rating factors, used in determining the policy premium, results in an increase in excess of twenty-five percent (25%), then proper and timely notification must be given and must specify the exact percentage of the intended increase, or the company is not authorized to increase the rates and/or rating factors of the policy until sixty (60) days after proper notice is given, whether before or after the policy renewal or anniversary date.

Failure, by any insurance company, to provide proper and/or timely notice and/or to extend the current rates and/or rating factors of the existing policy and the premium on a pro rata basis, pursuant to Tenn. Code Ann. § 56-7-1806, would constitute an unfair trade practice for which Tenn. Code Ann. § 56-7-1807 gives the Department the authority to bring an enforcement action under Tenn. Code Ann. § 56-8-104. Implementation of such action on the part of the Department could result in an order to cease and desist from further violations, the imposition of civil penalties, and/or the suspension or revocation of the company's certificate of authority.

It is also the Department's position, that an insurance producer who is aware that a commercial risk policy's rates and/or rating factors are being increased, without proper and/or timely notification to the insured, in violation of Tenn. Code Ann. § 56-7-1806(a), has an affirmative duty to notify both the company and the insured prior to the renewal of the policy and failure to do so constitutes a violation, by the producer, under Tenn. Code Ann. § 56-6-112(a)(7) and (8), for committing an unfair trade practice and using dishonest practices in the conduct of affairs under his/her producer license.