

IL Department of Insurance Issues Rule on Auto Insurance Rescission

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The Department of Insurance issued new rules, effective April 14, 2017, that preclude many policy rescissions by auto insurers based on post-issuance underwriting and, typically, post-claim underwriting. This is a pro-consumer development that was spearheaded by our own ISBA Insurance Law Section. Although the rules are not as tough as what we first proposed to the Department, they will have a material impact on the ability of substandard auto insurers to rescind policies. In short, if the company chooses not to investigate the insured driver's motor vehicle record prior to issuing a policy (and many substandard insurers do not perform any material underwriting prior to issuing the policy), then the company cannot later rescind the policy, typically after a claim has arisen, based on what it could have discovered earlier. Of the two rules issued, the first rule, 50 Ill. Admin Code 941.10, is a nearly verbatim restatement of the rescission section of the Illinois Insurance Code (215 ILCS 5/154). Section 941.10 provides:

No misrepresentation or false warranty made by the insured or in the insured's behalf in the negotiation for a policy of insurance, or breach of a condition of the policy, shall defeat or avoid the policy or prevent its attaching unless such misrepresentation, false warranty or condition shall have been stated in the policy or endorsement, or in a rider to or in the written application for the policy. No such misrepresentation or false warranty shall defeat or avoid the policy unless it was made with actual intent to deceive or materially affects either the acceptance of the risk or the hazard assumed by the company. With respect to a policy of insurance as defined in Section 143.13(a), (b) or (c) of the Insurance Code, except life, accident and health, fidelity and surety, and ocean marine policies, a policy or policy renewal shall not be rescinded after the policy has been in effect for one year or one policy term, whichever is less. This Section shall not apply to policies of marine or transportation insurance.

The second rule, 50 Ill. Admin Code 941.20, is the important development and accomplishes the restriction on post-issuance auto insurance underwriting. Section 941.20 provides:

If the company opts not to obtain readily available information about the named insureds and drivers listed on the application to underwrite the risk prior to issuing the policy, the company shall not defeat, avoid or rescind the policy of insurance based on obtaining the readily available information after a loss has occurred or a claim is filed. "Readily available information" is defined to be limited to the information that appears on the motor vehicle record (MVR) maintained by the Illinois Secretary of State and LexisNexis Comprehensive Loss Underwriting Exchange (C.L.U.E.) Auto Reports, or any of their corresponding subsequent equivalents.

In meetings leading to the issuing of these rules, the Department of Insurance acknowledged that it receives many consumer complaints concerning auto rescissions. Many complainants state that their applications were handled over the phone, that they were asked no questions, and that their insurance was immediately effective. Hopefully, the new rules will prevent many unfair post-

claim rescissions, where the insurance company could have discovered the applicant's history by doing a little investigation before issuing the policy.