

STATE OF MICHIGAN  
DEPARTMENT OF INSURANCE AND FINANCIAL SERVICES

Before the Director of the Department of Insurance and Financial Services

In the matter of:

Requirement to File Forms and Rates Prior to  
Implementing Public Acts 21 and 22

Order No. 19-048-M

Issued and entered  
this 20<sup>th</sup> day of September 2019  
By Anita G. Fox  
Director

**I. BACKGROUND**

Public Acts 21 and 22 of 2019 (PA 21 and PA 22) were enacted into law on June 11, 2019. Several provisions of the Insurance Code (Code) that were amended by PA 21 and PA 22 (amended provisions) were effective June 11, 2019; other provisions are not effective until July 2, 2020. It has come to the Director's attention that a limited number of automobile insurers have attempted to apply the amended provisions to claims made under existing, in-force policies without first submitting revised forms and rates for the Director's review and approval. Regardless of their effective date, amended provisions that affect the scope of coverage required to be provided under automobile policies may not be implemented until automobile insurers have submitted revised forms and rates for the Director's review and approval. Such amended provisions include, but are not limited to, Sections 3009, 3111, 3113, 3114, and 3115, MCL 500.3009, 500.3111, 500.3113, 500.3114, and 500.3115.

This order notifies automobile insurers that any attempt to implement the amended provisions that affect the scope of coverage required to be provided under an insurance policy without submitting revised policy forms and rates to DIFS for review and approval would violate Sections 2106, 2108, and 2236 of the Code, MCL 500.2106, 500.2108, and 500.2236.

**II. ANALYSIS**

Pursuant to Sections 2106, 2108, and 2236 of the Code, MCL 500.2106, 500.2108, and 500.2236, forms and rates are subject to the Director's review and disapproval. These sections of the Code were unchanged by PA 21 or PA 22 and remain the requisite procedure prior to a company's form or rate use. Section 2106(3)<sup>1</sup> provides that an insurer "may use rates for automobile insurance ... as soon as those rates are filed," which requires that the rates are filed with the Director.<sup>2</sup> Section 2108(6) provides: "An insurer shall not make, issue, or renew a contract or policy except in accordance with filings that are in effect for the

<sup>1</sup> This section was amended by PA 21 and PA 22, but the amendments are not effective until July 2, 2020.

<sup>2</sup> Rate filings must comply with all applicable sections of the Code, including but not limited to Sections 2109 and 2110, MCL 500.2109 and 500.2110.

insurer under this chapter." Section 2236(1) provides that "an insurer shall not deliver or issue for delivery in this state a basic insurance policy form ... unless a copy of the form is filed with the department and approved by the director as conforming with the requirements of this act and not inconsistent with the law." Section 2236(5) of the Code establishes the Director's broad authority to disapprove, withdraw approval, or prohibit the issuance of all types of insurance policy forms, and permits the Director to "... prohibit the issuance, advertising, or delivery of a form to any person in this state if the form violates this act, contains inconsistent, ambiguous, or misleading clauses, or contains exceptions and conditions that unreasonably or deceptively affect the risk purported to be assumed in the general coverage of the policy." Insurers that implement the amended provisions that affect the scope of coverage required to be provided under automobile insurance policies without first revising their forms or rates are in violation of Sections 2106, 2108, and 2236 of the Code, MCL 500.2106, 500.2108 and 500.2236.

In addition, any attempt by automobile insurers to rely on a "conformity to law clause"<sup>3</sup> within their policies as a way to adopt the amended provisions without substantively revised forms would constitute a violation of Section 2236(5) of the Code as reliance upon an insurance policy provision that "unreasonably and deceptively affect[s] the risk purported to be assumed in the general coverage of the policy."

Finally, the Code prohibits automobile insurers from reducing the coverage available under a policy without first providing notice to policyholders. Under Section 2104(5) of the Code, MCL 500.2104(5), the offering of coverage with less favorable terms or conditions than those previously provided is considered to be a "termination" unless the reduction in coverage was requested by the policyholder or if the terms and conditions of the coverage previously provided were no longer available from the insurer anywhere in Michigan. Further, when an insurer fails to provide notice to a policyholder of a reduction in coverage, the insurer is bound to the original coverage when the reduction was not brought to the insured's attention. See, e.g., *Casey v Auto-Owners Ins Co*, 273 Mich App 388 (2006).

## II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Director FINDS and CONCLUDES that:

1. Several provisions of the Code that were amended by PA 21 and PA 22 affect the scope of coverage required to be provided under automobile insurance policies.
2. PA 21 and PA 22 did not amend Sections 2106, 2108, and 2236 of the Code, MCL 500.2106, 500.2108, and 500.2236, which subject insurance policy forms and rates, and any revisions thereto, to DIFS' review and approval.
3. Implementation of statutory amendments that affect the scope of coverage required to be provided under an insurance policy without first revising insurance policy forms and rates to account for coverage reductions and then submitting such forms and rates to DIFS for

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<sup>3</sup> This includes any clause that purports to "conform" a policy to a change in law without providing notice to policyholders, and can take the form of a "conformity to state law" clause or a policy provision that generically states that coverage is to be afforded "pursuant to Michigan law" or similarly broad language.

review and approval would violate Sections 2106, 2108, and 2236 of the Code, MCL 500.2106, 500.2108, and 500.2236.


4. Implementation of statutory amendments that affect the scope of coverage required to be provided under an insurance policy through reliance on a "conformity to law clause" would violate Section 2236(5) of the Code, MCL 500.2236(5), as reliance upon an insurance policy provision that "unreasonably and deceptively affect[s] the risk purported to be assumed in the general coverage of the policy."
5. Failure by an automobile insurer to provide written notice to policyholders regarding reductions to coverage provided under an insurance policy is contrary to Section 2104(5) of the Code, MCL 500.2104(5), and Michigan case law.

### III. ORDER

Therefore, it is ORDERED that:

1. No automobile insurer shall incorporate amendments made by PA 21 and PA 22 that affect the scope of coverage required to be provided under an insurance policy into a policy form without first submitting its revised forms and rates for the Director's review and approval.
2. An automobile insurer shall not rely on "conformity to law clauses" or other similar provisions in its policy forms as a method of incorporating the statutory amendments that affect the scope of coverage required to be provided under an insurance policy under PA 21 and PA 22.
3. Any automobile insurer that wishes to revise its policy forms must submit revised forms and rate revisions to the Director for approval. The Director will disapprove any form or rate filings that incorporate statutory amendments prior to their effective date.
4. Any automobile insurer that has processed claims in accordance with the statutory amendments that affect the scope of coverage required to be provided under an insurance policy without first submitting revised forms and rates for the DIFS' review and approval shall immediately re-process those claims in accordance with the terms and conditions of the existing policy form.
5. The Assigned Claims Plan shall not provide coverage for claims that have been tendered to it under forms that purport to incorporate amendments made by PA 21 and PA 22 that affect the scope of coverage required to be provided under an insurance policy unless those forms have been approved by the Director.
6. Failure to comply with the form and rate filing and approval requirements of the Code and/or failing to comply with this Order will result in disapproval or withdrawal of approval of the form or rate and may subject the insurer to appropriate administrative action.

The Director specifically retains jurisdiction of the matters contained herein and the authority to issue such further orders and take such further actions as she shall deem just, necessary and appropriate.



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Anita G. Fox  
Director