

600 Automobile Insurance

609 Limitations on Automobile Surcharges in Voluntary Markets and the Assigned Risk Plan [Formerly Regulation 68]

1.0 Authority

- 1.1 This Regulation is adopted under the authority granted to the Commissioner under 18 **Del.C.** §§ 314, 2503 and 2527, and promulgated in accordance with 29 **Del.C.** Ch.101.

2.0 Purpose

- 2.1 The purpose of this Regulation is to require that rates charged to insureds reflect the variations in hazards or expense provisions chargeable to insureds and that rates be neither inadequate, excessive, nor unfairly discriminatory.

3.0 Applicability and Scope

- 3.1 This Regulation shall apply to all policies of personal non-fleet automobile insurance delivered in this state after the effective date. All renewal policies must conform with this Regulation. Nothing in this regulation is intended to require an insurer to surcharge any policyholder, nor to prohibit an insurer from filing a surcharge plan with the Department which results in lower surcharges than provided herein, nor to have retroactive effect.

4.0 Definitions

- 4.1 For purposes of this Regulation, the following terms shall be defined as follows:
- "At-fault Accident"** means an accident involving the ownership, maintenance or use of a motor vehicle, including unlawful parking, in which damages or losses are incurred and which is chargeable to the named insured or any other insured under the policy. In the event of contributory negligence, an accident shall be considered at fault if more than 50% of the fault is assessed to the insured. There is a rebuttable presumption that a single car accident which results in a claims payment is an "at-fault accident".
- "Insured" or "Policyholder"** means the named insured and any other person insured under the policy.
- "Serviceman"** shall mean a member of the United States Armed Forces who has been assigned to duty outside of the United States for at least thirty days immediately prior to applying for insurance.
- "Standard Coverage"** or "standard market" shall mean a policy of insurance which is customarily offered to new insureds by the insurance group or insurer based on age, sex, type of vehicle, territory and other standard rating criteria, which are actuarially justified but which excludes any consideration for underwriting or rating purposes of the factors which resulted in the insured's placement in the assigned risk program.
- "Surcharge"** means the additional amount added to the usual premium charge for insurance issued to a policyholder as a result of accidents, claims or convictions involving a motor vehicle, and includes a change in premium which results from the policyholder being moved into a higher pricing tier. The removal of discounts in accordance with an insurer's filed and approved rating plan will not be considered a surcharge for purposes of this regulation.

5.0 Surcharge plans

- 5.1 No surcharge plan filed for use in Delaware shall contain, nor shall any surcharge plan be used in Delaware, unless it complies with the following standards:
- 5.1.1 No surcharge shall be imposed against a named insured or any person insured under the policy for any claim paid by an insurer arising from a not at-fault accident.

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- 5.1.2 No surcharge shall be imposed against a named insured or any other person insured under the policy for an accident in which the insured is involved but results in no payment by the insurer.
- 5.1.3 No surcharge may be imposed for the first at-fault accident during any three year period which exceeds pro rata over a three year period the amount of the claim paid or reserved by the insurer. The amount of the claim shall be net of any deductible amounts assumed by the insured. Each insurer shall file a surcharge plan with the Department which in all but exceptional cases will comply with this subparagraph. An insured may question the amount of the surcharge whereupon a decision by the Department of Insurance shall be rendered within fifteen (15) business days after receiving the inquiry. In rendering its decision, the Department shall consult with the insurer to confirm the amount of the claim and the amount of the surcharge related thereto. If, after such review, the Department finds that the insurer's surcharge exceeds the standard required by this subsection, the Department may order the insurer to adjust the surcharge amount consistent with this subsection.
- 5.1.4 No insurer shall surcharge for any period which exceeds three years from the date when that surcharge was first imposed by the insurer.
- 5.1.5 No insurer shall use any surcharge program which results in an insured being both assessed a percentage charge or dollar amount and placed in a higher pricing tier arising from the same accident or violation. This limitation does not apply if the insurer would be permitted under State law to cancel or non-renew the insured.
- 5.1.6 No insurer shall impose any charge beyond its manual rates to any new policyholder who has had no at-fault accidents or point violations in the preceding three year period.
- 5.1.7 No surcharge may be imposed unless the named insured is notified at least ten days in advance of the effective date of the surcharge, of the amount of the surcharge and the reasons for the imposition of the surcharge. No surcharge may be instituted against a policyholder except at the time of renewal or policy issuance unless a new insured under the policy is added during the policy term and the new insured is surchargeable under the insurer's filed and approved surcharge plan. Notice of imposition of a surcharge may be included with the renewal offer. This subsection does not apply to new business.
- 5.1.8 Any named insured or any other person insured under the policy who has had at fault accidents or has been assessed points in the three years immediately preceding application for a policy of insurance may be surcharged in accordance with surcharge plans filed with the Delaware Insurance Department.
- 5.1.9 No policyholder shall be surcharged or charged any additional premium beyond a three year period because of at-fault accidents or points which occurred three or more years before the date of the policy is first written or renewed, unless additional points or accidents have been incurred.
- 5.2 For any policy of insurance issued under the Delaware Assigned Risk Program, and notwithstanding any other regulation to the contrary, the following provisions shall apply:
 - 5.2.1 Offer of Standard Coverage after Six Months: Any serviceman serving in the armed forces of the U.S. Government or a returning member of the Peace Corps who has not had insurance in the thirty days immediately preceding application for a policy of insurance because of serving in a foreign country and who, along with all other insureds under the policy, has not been involved in any at fault accidents or been assessed any points during the three years immediately preceding application for a policy of insurance shall be offered coverage by the insurer in the insurer's standard market, if the insurer has a standard market, at the end of six months. In the event the insurer does not have a standard market, the named insured shall be offered the insurer's non-surcharged rates for the named insured's classification. If the insurer offers coverage in a preferred company or preferred rating tier, for one year the insurer may surcharge an amount not greater than 50% of the difference between the assigned risk rate and the preferred rate.
 - 5.2.2 Offer of Standard Coverage after One Year: Each named insured who has been assigned to an insurer shall be offered coverage in the insurer's standard market, if the insurer has a standard market, at the end of one year if the named insured has not had a chargeable at fault accident or points assessed in the three years immediately preceding the date of the policy renewal. This offer

does not apply to insureds with Driving Under the Influence convictions, elections under the First Offenders' program, or vehicular homicide convictions. In the event the insurer does not have a standard market, the named insured shall be offered the insurer's non-surcharged rates for the named insured's classification. If the insurer offers coverage in a preferred rating tier or preferred company, for one year the insurer may surcharge an amount not greater than 50% of the difference between the assigned risk plan and the preferred rate.

- 5.2.3 If maintenance of a membership in an organization is a uniform requirement of eligibility for insurance with the insurer offering a takeout letter, a membership must be offered by the organization and accepted by the insured at the same time as the offer of coverage from the insurer is accepted by the named insured.

6.0 Severability

If any provision of this Regulation is found by a Court of competent jurisdiction to be held invalid, the remainder of the Regulation shall not be affected thereby.

7.0 Effective date

This Regulation shall become effective July 1, 1992.