

DEPARTMENT OF INSURANCE
OFFICE OF LEGAL AND SPECIAL PROJECTS

Statutory Authority: 18 Delaware Code, Sections 311 and 2712 and 21 Delaware Code, Sections 2118
and 2902 (18 **Del.C.** §§311 & 2712, and 21 **Del.C.** §§2118 & 2902)
18 **DE Admin. Code** 603

FINAL

ORDER

603 Delaware Motorists Protection Act

Regulation 603 implements the Delaware Motorists Protection Act. Recently, the Legislature passed HB 114, "An Act to Amend Title 21 of the Delaware Code Relating to Bodily Injury and Property Damage Coverage on Motor Vehicles," signed into law by the Governor on June 13, 2017 and effective on December 13, 2017 (six months after the date of enactment). The Act amends 21 **Del.C.** §2902 to raise the minimum bodily injury and property damage limits in all automobile insurance policies newly written or renewed after the effective date of the Act.

On July 15, 2017 the Department filed a general notice of amendments to Regulation 603 that updated coverage limits codified in the regulation to reflect the increased limits in HB 114. That notice was published in the August 1, 2017 *Register of Regulations*.

Attached to Regulation 603 is Form A, the Coverage Election form that must be presented by the insurer, broker or agent to the policyholder and acknowledged by the policyholder's signature that describes various types and levels of coverage. In its July 15, 2017 General Notice, the Department should have also updated the coverage limits set forth on Form A, Line 6. Accordingly, by way of this notice, the Department is updating Form A, Line 6 to reflect the revised coverage minimums promulgated by HB 114.

This amendment is exempt from the requirement of public notice and comment because it is an amendment to existing regulations to make them consistent with changes in basic law but which do not otherwise alter the substance of the regulations, pursuant to 29 **Del.C.** §10113(b)(5).

It is so ordered. This 9th day of August, 2017

Trinidad Navarro
Commissioner, Delaware Department of Insurance

603 Delaware Motorists Protection Act

1.0 Scope and Authority

- 1.1 This Regulation is adopted by the Commissioner pursuant to 18 **Del.C.** §§311 and 2712, 21 **Del.C.** §2118 and promulgated in accordance with the Delaware Administrative Procedures Act, Title 29 **Del.C.** Ch. 101.
- 1.2 21 **Del.C.** §2118 provides that policies purporting to meet the requirements of the Section must provide coverage and policyholder notifications required by that Section.
- 1.3 In order to enable insurers to satisfy this requirement, the following guidelines are promulgated to advise insurers of the standards which will be used by the Insurance Department in reviewing forms filed by insurers.

8 DE Reg. 1158 (02/01/05)

2.0 Coverage

- 2.1 Policies shall contain at least the following required coverages:
 - 2.1.1 Bodily injury and property damage liability with limits of at least those prescribed by the Financial Responsibility Laws of Delaware.
 - 2.1.2 Personal Injury Protection.
 - 2.1.3 Compensation for damage to property other than motor vehicles.
- 2.2 The following additional coverages must be offered to the insured:
 - 2.2.1 Compensation for damage to the insured motor vehicle, including loss of use of the motor vehicle.
 - 2.2.2 Uninsured/Underinsured vehicle coverage.

3.0 Minimum Coverage Required

The provisions herein required need not be stated in the language or form of these regulations, but the coverage afforded shall be equal or of greater benefit to the insured with the exception of the requirement stated in section 11.1.

21 DE Reg. 150 (08/01/17)

4.0 Definitions

"Bodily Injury" means bodily injury to a person and sickness, disease or death which results from it.

"Funeral Expenses" means reasonable, customary and necessary expenses incurred within two years of the accident for professional funeral services. These expenses include the cost of a burial plot for one person.

"Injured Person" is as defined in 21 **Del.C.** §2118(a)(5).

"Innocent Third Parties" means claimants who at the time of the event leading to the claim (1) were not in violation of any Rules of the Road as promulgated under Title 21, **Delaware Code** and (2) whose activities did not contribute in any way to the accident. This presumption may be rebutted by clear and convincing evidence.

"Loss of Earnings" means loss of salary or its equivalent, net of taxes which were lost by reason of inability to work. This covers loss of wages, salary or lost earnings of a self-employed person. Payment of lost earnings is to be at the time they are actually lost.

"Loss of Use" means expenses necessarily and actually incurred by the named insured as a result of damage to the insured motor vehicle.

"Medical Expenses" means reasonable charges for necessary medical, hospital, dental, surgical, x-ray, ambulance, professional nursing services and prosthetic devices.

"Motor Vehicle" means a land motor vehicle, including a trailer or semi-trailer as used therewith, required to be registered, licensed and required to carry insurance under the Financial Responsibility Laws.

"Nonstandard" means an insured policyholder who is unable to procure insurance through the standard market and whose premium charge is in excess of the premium charged by the Delaware Automobile Insurance Plan ("DAIP") for similar (though not identical) coverage.

"Substitute Service Expenses" means reasonable and necessary extra-incurred expense for personal services which would have been performed by the injured person had he or she not been injured.

"Wilmington Auto Accident Reparations Arbitration Committee or Its Successors" as described at 21 **Del.C.** §2118(g)(3) is deemed to include the insurance industry forums including the nationwide intercompany arbitration agreement, special arbitration agreement forum, automobile accident reparations arbitration agreement.

8 DE Reg. 1158 (02/01/05)

5.0 Bodily Injury Liability and Property Damage Liability

The insurer shall undertake to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages because of bodily injury or property damage caused by accident and arising out of ownership, maintenance or use of a motor vehicle. The policy shall designate by explicit description or by appropriate reference the motor vehicle to which this coverage applies. Indemnity from such legal liability shall be to a limit of at least the Financial Responsibility Laws of the State of Delaware and, if a single limit for such bodily injury and property damage liability is provided, such single limit shall be not less than the sum of the bodily injury and property damage limits stated in the Financial Responsibility Laws for any one accident.

21 DE Reg. 150 (08/01/17)

6.0 Personal Injury Protection

- 6.1 The policy shall provide compensation to an injured person for medical expenses, funeral expenses, loss of earnings and for substitute services incurred as a result of bodily injury, caused by accident, involving the insured vehicle.
- 6.2 The policy must have minimum limits for this coverage as stated in 21 **Del.C.** §2118. The policy may provide for higher limits of compensation but the compensation for funeral expenses included in the foregoing shall not exceed the sum of \$5000 per person. Personal injury protection benefits shall be payable within 30 days of the demand thereof by the claimants provided that reasonable proof of loss for which the benefits as demanded has been submitted to the PIP carrier.
- 6.3 Any insurer, in accordance with filings made with the Insurance Department, may provide for certain deductibles, waiting periods, sublimits, percentage reductions, excess provisions or similar reductions at the election of the owner of a motor vehicle to apply only to loss and expense incurred as a result of injury to the owner of the vehicle or members of his household. All deductibles offered must be per accident and not per

person. For the purpose of this coverage members of the owner's household shall be members of the named insured's immediate family not having a separate household, and persons actually residing with and economically dependent upon him/her. The owner's election of any reduced benefits described in this section must be made in writing and signed by that owner. The requirement of an election in writing may be satisfied by a statement on the application for insurance, or other form which shall clearly convey the effect of his/her option selected. In order to assure that this election is made, insurers, agents or brokers must offer for the consideration of the owner the deductibles or similar reductions required to be filed in accordance with this section.

7.0 Compensation for Damage to Property Other than Motor Vehicles

Compensation for damage to property arising as a result of an accident involving the motor vehicle, other than damage to a motor vehicle, aircraft, watercraft, self-propelled mobile equipment and any property in or upon any of the aforementioned, with the minimum limits of \$10,000 for any one accident. Payments under this section shall be excess over other valid and collectible insurance.

21 DE Reg. 150 (08/01/17)

8.0 Compensation for Damage to Motor Vehicles

8.1 Every insurer shall offer compensation for damage to the insured motor vehicle identified in the policy including the loss of use of the motor vehicle up to but not exceeding the actual cash value of the vehicle at the time of the loss. The coverage for loss of use shall not be less than \$10 per day.

8.2 The owner of the motor vehicle so covered may elect to have such coverage excluded in whole or in part by use of certain deductibles and exclusions in accordance with filings made by the insurer with the Commissioner.

8 DE Reg. 1158 (02/01/05)

9.0 General Conditions

9.1 The coverages provided in an insurance policy as described herein may be subject to conditions and exclusions customary to the field of liability, casualty and property insurance and not inconsistent with the requirements of this section.

9.2 Personal Injury Protection benefits shall be considered excess to any other similar insurance for passengers, other than Delaware residents, when the accident occurs outside this State.

9.3 To enable owners of motor vehicles to properly exercise the coverage elections, insurers are required to offer deductibles, waiting periods, sublimits, percentage reductions and excess provisions as designated in 21 Del.C. §2118(a)(2)(f).

9.4 To enable owners of motor vehicles who are unable to procure insurance through the standard market to properly exercise their coverage elections, insurers and insurance agents are required to

9.4.1 notify policyholders if they are considered nonstandard by the insurer and

9.4.2 to inform the policyholders of the availability of the Delaware Assigned Insurance Risk Plan ("DAIP"). Notwithstanding the above, no agent is required to write a DAIP policy.

9.5 Insurers are required to notify injured persons covered under this section that the coverage is for two years from the date of the accident, and that it only extends beyond two years in cases involving surgical or dental procedures related to the accident and that were impossible or impractical to perform within the two year period. Such surgical or dental procedures must be verified in writing within two years of the accident, by a qualified medical or dental practitioner. The insurer must give prompt and timely notice after the written application for benefits has been made. This notice can be included on the APPLICATION FOR BENEFITS form.

8 DE Reg. 1158 (02/01/05)

10.0 Mandatory Intercompany Arbitration

10.1 All insurers authorized to write auto insurance in this State shall be deemed signatory companies of the insurance industry forums arbitration agreements for accidents, insured events, or losses occurring within the limits of the State of Delaware regarding first and third party claims and to first party claims in other states or territories of the United States or foreign countries.

10.2 The requirement to participate in intercompany arbitration for Delaware disputed claims shall not imply that non-signatory companies are obligated to become "signatory companies" to the intercompany arbitration

agreements or to affect these companies' position with respect to intercompany arbitration outside the jurisdiction of this State.

- 10.3 Non-signatory companies shall be subject to all duties and obligations of signatory companies with respect to Delaware claims, or the claims of Delaware policyholders. This includes payment of dues and fees and compliance with the various arbitration forum rules.
- 10.4 In all disputed Delaware claims involving damage to vehicular or non-vehicular property of "innocent third parties", where the dispute involves a liability determination, the insurer providing liability and/or non-vehicular no-fault property damage coverage for the vehicle which actually strikes or first strikes the "innocent third party's" property shall promptly pay the "innocent third party's" property damage claim. The total payment shall not exceed the lowest of the applicable available coverage of the involved insurance carriers. The insurers shall submit the case to the appropriate arbitration forum after diligent efforts to resolve the claims of the contesting insurers fail.

11.0 Delaware Form A "Coverage Election"

- 11.1 The coverage election form (Delaware Form A), attachment to Regulation 603 (Formerly Regulation No. 9), shall be properly presented by the insurer, broker, or agent to the policyholder, and acknowledged by the policyholder's signature. Proper presentation by the insurer, where possible, should be in person at the time application is made. If personal presentation is not possible, or if there is further need for clarification, insurers may present Form A by mail. The language or context of Form A shall be as shown unless, in accordance with filings made with this office, the insurer offers options, deductibles, etc., other than those described on the approved form. Any amended Form A shall clearly describe all additional options of coverage and must be filed with this Department prior to use. Any version of the coverage election form which deviates from Delaware Form A must be filed with the Department prior to its use except that companies may overprint the form with company name, address and logo without filing it with the Department, providing the text remains unchanged.
- 11.2 The policyholder shall receive a full explanation of all deductible options available to the policyholder in writing as a separate document from the insurer and the insurer shall obtain from the policyholder a written acknowledgment of the policyholder's receipt of such explanation as a separately includable item on the Form A. Additionally, the Form A acknowledgment signed by the policyholder shall include the related cost for each deductible offered by the insurer.

8 DE Reg. 1158 (02/01/05)

21 DE Reg. 150 (08/01/17)

12.0 Notices to Policyholders

- 12.1 Insurers not less than once annually shall inform their policyholders of the coverage in force for each auto policy. The form of this notice may be in any form reasonably calculated to inform policyholders of their existing coverage.
- 12.2 Upon renewal of any policy in effect, on the date of the adoption of this regulation each insurer shall send a notice to their nonstandard policyholders in substantially the following form:

"NOTICE TO NON-STANDARD POLICYHOLDERS:

My agent has informed me that I am considered a nonstandard driver and has notified me of the availability of the Delaware Automobile ("Assigned Risk") Insurance Plan, which provides less expensive automobile insurance for some drivers."

- 12.3 The failure of a policyholder to sign and return this statement shall not create any legal rights nor shall the insurer be responsible for the policyholder's failure to return the signed statement.

21 DE Reg. 150 (08/01/17)

13.0 Claimant's Duty

An injured party shall submit to reasonable treatment recommended by competent physicians, and must act reasonably to minimize the disability and mitigate damages.

21 DE Reg. 150 (08/01/17)

14.0 Separability

If any provision of this Regulation shall be held invalid, the remainder of the Regulation shall not be affected thereby.

21 DE Reg. 150 (08/01/17)

15.0 Effective Date

This regulation became effective December 1, 1983, was amended May 16, 1987, and was further amended effective December 13, 2017. The effective date of the third amendment, including revisions to Form A, is December 13, 2017. The use of revised Form A shall be required for all newly written and renewed policies issued on or after December 13, 2017.

21 DE Reg. 150 (08/01/17)

STATE OF DELAWARE - INSURANCE DEPARTMENT

DELAWARE MOTORISTS PROTECTION ACT
 REQUIRED STATEMENT TO POLICYHOLDERS

FORM A
 REVISED ~~8-1-2017~~ 1-2017,
 EFFECTIVE 12-13-2017

The owner of a motor vehicle registered in the State of Delaware is required to purchase at least the following minimum insurance coverages and limits of liability under the Delaware Motorists Protection Act.

- Bodily Injury Liability: (\$25,000 each person; \$50,000 each accident)
- Property Damage Liability: (\$10,000 each accident)
- Personal Injury Protection: (\$15,000 each person; \$30,000 each accident)
- Damage to Property Other Than a Motor Vehicle (\$10,000)

INSURED _____ POLICY NO. _____ CO. _____

EFF. _____ EXP. _____ VEHICLE: _____

A. COVERAGES	B. OPTIONS (YOU MUST SELECT LIMITS AND COVERAGE DESIRED)	C. SELECTION
1. BODILY INJURY LIABILITY (Compulsory)	I WANT 1. Limits as Shown in Column C <input type="checkbox"/> 2. Minimum Limits <input type="checkbox"/>	Bodily Injury Limits Each Person Each Accident \$ _____,000 \$ _____,000
2. PROPERTY DAMAGE LIABILITY (Compulsory)	I WANT 1. Limits as Shown in Column C <input type="checkbox"/> 2. Minimum Limits <input type="checkbox"/>	Property Damage Limits \$ _____,000
3. NO-FAULT	I WANT	Personal Injury

(Compulsory) (Additional Personal Injury Protection available by selecting higher limits)	1. Add'l Limits as Shown in Column C <input type="checkbox"/>	Protection Limits	
	2. Minimum Limits <input type="checkbox"/>	Each Person	Each Accident
		\$ _____,000	\$ _____,000
	3. Full Coverage with no Deductible <input type="checkbox"/>	Yes _____	No _____
		<input type="checkbox"/> cost-- _____	
	4. Deductible Applicable to Named Insured only <input type="checkbox"/>	DEDUCTIBLE	
5. Deductible Applicable to Named Insured and Members of his household <input type="checkbox"/>	<input type="checkbox"/> \$250	<input type="checkbox"/> \$500	
	<input type="checkbox"/> cost-- _____	<input type="checkbox"/> cost-- _____	
	<input type="checkbox"/> \$1,000	<input type="checkbox"/> \$ _____	
	<input type="checkbox"/> cost-- _____	<input type="checkbox"/> cost-- _____	
6. (Motorcycle Risks Only) Restricted Coverage – Excludes off the highway accidents when no other motor vehicle is involved <input type="checkbox"/>	DEDUCTIBLE		
	<input type="checkbox"/> \$250	<input type="checkbox"/> \$500	
	<input type="checkbox"/> cost-- _____	<input type="checkbox"/> cost-- _____	
	<input type="checkbox"/> \$1,000	<input type="checkbox"/> \$ _____	
	<input type="checkbox"/> cost-- _____	<input type="checkbox"/> cost-- _____	

<p>4. PHYSICAL DAMAGE</p>	<p>I WANT</p> <p>1. Collision <input type="checkbox"/></p> <p>To Reject This Coverage Entirely <input type="checkbox"/></p> <p>2. Comprehensive <input type="checkbox"/></p> <p>To Reject This Coverage Entirely <input type="checkbox"/></p>	<p>DEDUCTIBLE</p> <p>\$ _____</p> <p>\$ _____</p>
<p>5. CAR RENTAL EXPENSE (Optional)</p>	<p>\$ _____ per day</p> <p>\$ _____ maximum</p>	<p>Yes _____ No _____</p>
<p>6. UNINSURED/UNDER-INSURED VEHICLE COVERAGE* (Optional) (Available in Limits up to the Bodily Injury Liability Limits or \$100,000/300,000 whichever is less)</p>	<p>I WANT</p> <p>1. Minimum Limits \$15,000/30,000 \$25,000/50,000 <input type="checkbox"/></p> <hr/> <p>2. Bodily Injury Liability Policy Limit <input type="checkbox"/></p> <p>3. Other – Specify in Column C <input type="checkbox"/></p> <hr/> <p>4. To reject this coverage entirely <input type="checkbox"/></p>	<p>LIMITS</p> <p>Each person _____</p> <p>Each accident _____</p>

*Uninsured/Underinsured Motorist Coverage is not mandatory, but it is required that the coverage be offered to all policyholders. This coverage is designed to pay damages for injuries that could be received in accidents caused by drivers of uninsured and underinsured vehicles. This includes \$10,000 Property Damage Coverage, which applies only to accidents with uninsured vehicles and is subject to a \$250 deductible.

My selection of a PIP (No-Fault) deductible or no PIP (No-Fault) deductible at the cost stated above is based on the information provided to me by the insurer. I understand and agree that my selection of a PIP (No-Fault) deductible or no PIP (No-Fault) deductible shall be binding on me and all persons subject to the terms of this policy. My selection shall apply to any renewal, reinstatement, substitute amended, altered, modified or replacement policy with this or any affiliated or successor company unless I or a named insured shall submit a written request to change the deductible and pay such lesser or greater premium that may apply to such change.

Signature of Name Insured _____ Date _____

I understand my policy will be issued to reflect the options I have chosen with respect to the coverages shown under Column A above. I further understand and agree that my selection of the Uninsured/Underinsured Motor Vehicle Coverage option, as shown above, shall be applicable to the policy of insurance on the vehicle described, on all future renewals of the policy, on future policies issued me because of a change of vehicle or coverage or because of an interruption of coverage, unless I subsequently request such coverage in writing.

Signature of Name Insured _____ Date _____

Agent's Name _____

It is not the intent of this statement to limit or discourage the purchase of increased limits of liability and personal injury protection coverage, or other additional coverages which may be available from the company.

TO BE SIGNED BY NON-STANDARD POLICYHOLDERS

My agent has informed me that I am considered a non-standard driver and has notified me of the availability of the Delaware Automobile ("Assigned Risk") Insurance Plan, which provides less expensive automobile insurance for some drivers.

Signature of Named Insured _____

8 DE Reg. 1158 (02/01/05)

21 DE Reg. 150 (08/01/17)

21 DE Reg. 237 (09/01/17) (Final)