

February 10, 2015

Ms. Susan Anders
Rules Coordinator
Illinois Department of Insurance
320 West Washington Street, Third Floor
Springfield, Illinois 62767

Re: Opposition to Proposed Amendment to 50 Illinois Administrative Code 941
“Misrepresentation and False Warranties” 38 *Illinois Register* 23975, December 19, 2014

Dear Ms. Anders:

NAMIC is the largest national property/casualty insurance trade and political advocacy association in the United States. Our 1,400 member companies write all lines of property/casualty insurance business and include small, single-state, regional, and national carriers. In Illinois, we have 211 member companies, including 105 domiciled companies, that provide 45% of the state’s insurance coverage.

NAMIC opposes the proposed rule to create new Part 941 to Title 50 of the Illinois Administrative Code. The proposal, in essence, mandates that conclusive evidence of fraud shall be ignored if certain procedural hoops are not jumped exactly right by the insurer.

State law currently imposes a rigorous standard on insurers seeking to rescind an insurance policy. 215 ILCS 5/154 states in part:

No such misrepresentation or false warranty shall defeat or avoid the policy unless it shall have been made with actual intent to deceive or materially affects either the acceptance of the risk or the hazard assumed by the company.

The key language in the proposed rule reads as follows:

Section 941.20 Misrepresentation

- a) Actual intent to deceive or materially affect either the acceptance of the risk or the hazard assumed by the company shall not be deemed to exist and shall not allow a company to defeat, avoid or rescind a policy, if the application for the policy was not signed and dated by the insured.
- b) Actual intent to deceive or materially affect either the acceptance of the risk or the hazard assumed by the company shall not be deemed to exist and shall not allow a company to defeat, avoid or rescind a policy if the information that was misrepresented or falsely

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warranted was available and could have been known to the insurance company through verification by the insurance company from readily available sources at the time the policy was issued. Readily available sources include the motor vehicle record maintained by the Illinois Secretary of State and the LexisNexis Comprehensive Loss Underwriting Exchange (C.L.U.E.) Reports.

First, NAMIC wants to underscore that the proposed rule is incongruent with how commercial lines work, particularly the underwriting of large fleets of vehicles. This is true both for the “sign and date” subsection and the “check the reports” subsection. If adopted, businesses with commercial fleets will have to re-engineer their processes to make a special exception for Illinois,.

The “sign and date” subsection imposes administrative requirements that will burden insureds. For instance, carriers might not bind coverage absent a signature and date if doing so exposes them to fraud. Closer to home, parents would not be able to add young drivers to the family policy after a telephone call to their agent.

As for the “check the reports” subsection, the Department is imposing costs that will be borne by insureds as an unnecessary redundancy is added to the underwriting process. And while in some cases checking C.L.U.E. or other reports is the prudential thing to do, it should not be mandated, particularly when the effect of the proposal is to create a “safe harbor” for application fraud.

Finally, the proposed rule suffers from legal infirmities. For instance, the only justification provided for the proposal is the conclusory assertion that the Department “has seen a voluminous number of complaints.” There is no evidence offered of how many, how large an increase, or compared to what. This lack of detail is noteworthy in that the Department conceded in the Notice of Proposed Rules that the “rulemaking was not included on either of the 2 most recent agendas because the Department did not anticipate the need for this rulemaking within that timeframe.” Specifics on what has changed are needed.

Further, there is no attempt to discern the validity of the complaints: The Department merely says it “believes” the actions taken by companies are not valid. That is wholly insufficient to justify a change in the substantive law and is undoubtedly in excess of the grant of rulemaking authority given by the General Assembly to the Department.

Thank you for considering our comments on this issue. If you have any questions, please contact me. In the meantime I remain,

Sincerely,

A handwritten signature in black ink, appearing to read 'Mark Johnston', with a stylized flourish at the end.

Mark Johnston
Director - State Affairs, Midwest Region