

Bulletin No. 2004-31

December 16, 2004

Re: Premium Finance Legislation

The second of two pieces of legislation affecting premium financed policies became law on December 15, 2004. That bill, Senate 6474-A, amends Insurance Law Section 3428 to expressly exempt excess line insurance policies from a provision that limits short rate cancellation charges to the greater of \$60 or 10% of the gross premium when the policy is financed through a premium finance agreement. This provision now applies only to policies issued by licensed insurers.

Essentially, prior to this legislation, the enforceability of minimum earned premium provisions in excess line policies turned upon the question of whether or not the insured financed the premiums. Minimum earned terms were enforceable when the premiums were not financed, but the New York State Insurance Department mandated refunds of what the policy characterized as minimum earned when the premiums were financed. This problematic distinction is eliminated by the new law.

All members releasing any quote with a minimum earned policy provision are advised to clearly disclose such provisions to the insured, and where applicable the retail broker and/or premium finance company.

The other premium finance bill, Senate 123-C, was signed into law by Governor Pataki on September 28, 2004 and was introduced primarily at the request of the Professional Insurance Wholesalers Association (PIWA). This bill essentially requires a retail producer to disclose the name and address of the wholesale broker and certain other information to any premium finance company through which the retailer finances the premium for the particular policy involved.

The premium finance company in turn, is duty bound to notify the wholesale broker and insurer that the premium was financed. This legislation becomes effective on January 1, 2005. This new law will prevent nonpayment or delays in forwarding financed premium to the wholesale broker in those infrequent circumstances where a retailer might not transmit payment in good faith. Non-compliance by the retailer or premium finance company subjects them to penalties under the law.



ELANY is grateful for the continuing support of the legislature, particularly the leadership in the banking and insurance committees, and Governor Pataki and his staff in recognizing the need for these amendments to the law.

Copies of each bill are attached for your further review.

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