

April 25, 1957

SUBJECT: INSURANCE

TO ALL INSURERS AUTHORIZED TO WRITE LIABILITY INSURANCE

Gentlemen:

This Department has been asked whether, in view of the provisions of the Motor Vehicle Financial Security Act, an insurer may date back premium refunds upon cancellation of an "Owner's Policy of Liability Insurance" or may date back a cancellation of coverages other than the liability insurance required to comply with the aforementioned Act, for the purpose of calculating the amount of the premium refund.

In order to acquaint you with the Department's views concerning this inquiry, you are advised that Chief Counsel for the Department has rendered the following opinion:

"When a delay occurs in notifying the insurer to terminate coverage by reason of the sale of the insured vehicle or the lay-up of the vehicle and in the surrender of registration certificate and plates, the calculation of the premium to be refunded involves not only the premium for the minimum automobile liability coverage prescribed by the Motor Vehicle Financial Security Act, but also the premiums for coverage written in excess of the minimum physical damage coverage, collision coverage and medical payments, which may have been included in the Owner's Policy of Liability Insurance which is being terminated.

"Inasmuch as an "Owner's Policy of Liability Insurance" cannot be terminated by the insured except by the surrender of his registration certificate and number plates, as required by Section 93-b of the Motor Vehicle Financial Security Act, or by the insurer by giving notice in accordance with Section 93-c of that Act, the insurer is obliged to collect a premium for the period the insurance is in force, as required by Section 188 and other applicable provisions of Article VIII of the Insurance Law and, therefore, should an insurer grant a refund of premium effective prior to the effective date of the termination of the insurance it would be a discrimination as between policyholders and contrary to the last mentioned provisions of the Insurance Law.

"The situation is the same with respect to a refund of a premium, whether the termination is for a policy providing minimum coverages prescribed by the Motor Vehicle Financial Security Act only or for a policy providing higher limits or benefits covering physical damage insurance or medical payment insurance benefits. All such benefits continue in effect until the policy is terminated and, as a consequence, there is an exposure as to each of those benefits requiring the payment of a premium therefor.

"It is, therefore, my opinion that it is not permissible under the Insurance Law to pay upon cancellation of an "Owner's Policy of Liability Insurance" a refund of premium for any of the coverages included in such policy, calculated as of a date prior to the effective date of termination of the policy, or to terminate the minimum prescribed liability insurance as of one date and pre-date the termination of the other coverages for the purpose of calculating the refund of the premium in the termination of the other coverages as of such earlier termination date."

Very truly yours,

(Signed) LEFFERT HOLZ

Superintendent of Insurance