

June 15, 1976

SUBJECT: INSURANCE

[A> UPPERCASE TEXT WITHIN THESE SYMBOLS IS ADDED <A]

[D> Text within these symbols is deleted <D]

WITHDRAWN

Circular Letter No. 15 (1976)

TO ALL INSURERS WRITING PROPERTY-CASUALTY INSURANCE IN THIS STATE

RE: CANCELLATION AND NON-RENEWAL OF PERSONAL AUTOMOBILE INSURANCE AND OTHER POLICIES SUBJECT TO SECTION 167-a

The New York State Legislature has passed and the Governor has signed ch. 348 (L. 1976), which, among its several provisions, amends § 167-a of the Insurance Law relating to limitations on the cancellation and the non-renewal of personal automobile insurance policies. A copy of the full text of the act is attached.

The law has an August 1, 1976 effective date. Your attention is called particularly to insurers' obligations under Sections 1, 2 and 3, which provide in part that:

(1) Automobile insurance policies which were previously subject to a three year continuation under the provisions of the no-fault law (L. 1973, ch. 13) must be continued for one additional year of coverage, unless certain newly specified grounds for non-renewal exist. The no-fault law applied to policies which had been effective before August 1, 1973 and provided, in substance, that such policies must be continued for three successive one-year periods (unless the insured failed to pay the premium or a driver's license or registration was suspended or revoked), beginning with the first anniversary date between August 1, 1973 and July 31, 1974 inclusive. This three year coverage provision was continued in the consolidation of old Sections 167-a, 167-b and 116-a effected by L. 1974, ch. 1072. Had ch. 348 (L. 1976) not been enacted, the renewal protections of § 167-a which are applicable to such policies would have expired beginning August 1, 1976 through July 31, 1977, as their anniversary dates would have been reached. The expanded list of grounds upon which insurers may base non-renewal of such policies was derived from the most serious surcharge categories in various merit rating plans currently used by most insurers in this State, and reflect poor driving behavior and/or anti-social conduct occurring within the 36 month period ending approximately three months prior to the policy's anniversary date.

Insurers should be especially aware of the rights of these insureds, whose personal automobile policies are required to be renewed for an additional year under this statute. If such an insured has inadvertently received a notice of non-renewal, the insurer must immediately notify the insured in writing that the non-renewal was in error and that the insurer will automatically reinstate the insured unless the insured notifies the insurer otherwise.

(2) Automobile insurance policies which were either newly written or first voluntarily renewed between August 1, 1974 and July 31, 1976 remain unaffected by the expanded list of grounds for non-renewal, until the expiration of their three year required policy period.

(3) Newly written automobile insurance policies, with effective dates on or after August 1, 1976, are subject to the expanded list of grounds for non-renewal, which may be applied to such policies at each annual anniversary date during their three year required policy period.

(4) All automobile insurance policies, regardless of when issued, are affected by certain changes in the permitted grounds for cancellation. Under ch. 348 (L. 1976), the suspension or revocation of a driver's motor vehicle registration is no longer a permitted ground for cancellation. However, the suspension or revocation at any time during the required policy period of the driver's license of the named insured or of any other person who customarily operates an automobile insured under the policy is a permitted ground for cancellation. Such cancellation is not permitted where it is based solely upon the suspension of a probationary driver's license.

(5) Under ch. 348 (L. 1976), policies which are newly assigned to become effective on or after August 1, 1976 pursuant to the rules of the New York Automobile Insurance Plan (Assigned Risk Plan) will no longer be subject to the provisions of § 167-a. Policies which have been or will be issued by the Plan through July 31, 1976 and which are afforded the protections of § 167-a (by L. 1974, ch. 1072), will continue to be so protected, until their three year assignment period expires. For example, these policies will remain subject to the 15 day statutory "grace period" for payment of premium after cancellation (until expiration of their three year assignment).

\* \* \*

Insurers should note that § 167-a continues to require that any personal lines (both auto and non-auto) termination notice, whether cancellation, non-renewal or conditional renewal, must include the specific reason or reasons for such termination. Your attention is also directed to Insurance Department Circular Letter No. 2 (1974), specifically concerning Automobile Cancellation Notices, whose provisions remain applicable. The Circular Letter, among other things, forbids the mailing of a notice of cancellation before the due date for premium payment has passed.

While this letter is primarily intended to describe certain major amendments to § 167-a relating to personal automobile insurance policies, insurers should be cognizant of other important provisions of ch. 348 (L. 1976), including changes with respect to personal non-automobile policies (e.g., homeowners) and the rights of terminated producers and subproducers.

A copy of this Circular Letter should be distributed to appropriate personnel, and receipt hereof should be acknowledged in writing by a responsible officer of the company, to the attention of Jack Reynolds, Associate Examiner, Automobile and Compensation Bureau, New York Insurance Department, Two World Trade Center, New York, New York 10047.

Very truly yours,

[SIGNATURE]

THOMAS A. HARNETT

SUPERINTENDENT OF INSURANCE

Attachment

STATE OF NEW YORK

S. 9957-A

A. 12518-A

## SENATE-ASSEMBLY

April 14, 1976

IN SENATE--Introduced by Sens: DUNNE, GORDON, HUDSON, DONOVAN, LEWIS--read twice and ordered printed, and when printed to be committed to the Committee on Insurance--committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

IN ASSEMBLY--Introduced by COMMITTEE ON RULES--(at request of Messrs. Silverman, M. H. Miller, G. W. Miller, Tallon, Gorski, Mega, Daly, Calogero, Burns, Healey, Sears)--read once and referred to the Committee on Insurance--committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

## AN ACT

to amend the insurance law, in relation to the cancellation and renewal of insurance policies, continuation of policies obtained through agents and brokers whose contracts and accounts are terminated and to repeal subdivision six of section one hundred sixty-seven-a of such law relating thereto

[A> THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS: <A]

Section 1. Paragraphs (a) and (c) of subdivision one of section one hundred sixty-seven-a of the insurance law, as added by chapter one thousand seventy-two of the laws of nineteen hundred seventy-four, are hereby amended to read, respectively, as follows:

(a) "Covered policy" means a contract of insurance issued or issued for delivery in this state, on a risk located or resident in this state, insuring any of the following contingencies:

(i) loss of or damage to real property used predominantly for residential purposes [A> AND WHICH CONSISTS OF NOT MORE THAN FOUR DWELLING UNITS, OTHER THAN HOTELS AND MOTELS; <A]

(ii) loss of or damage to personal property in which natural persons have an insurable interest, except personal property used in the conduct of a business;

(iii) losses or liabilities arising out of the ownership, operation, or use of a motor vehicle, predominantly used for non-business purposes, when a natural person is the named insured under the policy of automobile insurance; and

(iv) other liabilities for loss of, damage to, or injury to persons or property, not arising from the conduct of a business when a natural person is the named insured under the policy.

A contract which insures any of the contingencies listed in items (i) through (iv) as well as other contingencies shall be a covered policy if that portion of the annual premium attributable to the listed contingencies exceeds that portion attributable to other contingencies.

[A> A COVERED POLICY SHALL NOT INCLUDE A POLICY ISSUED PURSUANT TO ANY PLAN ESTABLISHED UNDER SECTION SIXTY-THREE OF THIS CHAPTER. <A]

(c) "Required policy period" means a period of three years from the date, on or after the effective date of this act, as of which a covered policy is first issued or

[D> Text within these symbols is deleted <D] [first]

[D> Text within these symbols is deleted <D] is voluntarily renewed.

§ 2. Subdivisions three and five of section one hundred sixty-seven-a of such law, as added by chapter one thousand seventy-two of the laws of nineteen hundred seventy-four, are hereby amended to read, respectively, as follows:

(3) After a covered policy has been in effect for sixty days, or upon  
[D] Text within these symbols is deleted <D> [issuance]  
[D] Text within these symbols is deleted <D> [A] THE EFFECTIVE DATE <A> if the policy is a renewal, no notice of cancellation shall be issued to become effective unless required pursuant to a program approved by the superintendent as necessary because a continuation of the present premium volume would be hazardous to the interests of policyholders of the insurer, its creditors or the public, or unless it is based on one or more of the following:

(a) With respect to automobile insurance policies:

(i) nonpayment of premium; or

(ii) suspension or revocation [A] DURING THE REQUIRED POLICY PERIOD <A> of the driver's license  
[D] Text within these symbols is deleted <D> [or motor vehicle registration]  
[D] Text within these symbols is deleted <D> of the named insured or any other  
[D] Text within these symbols is deleted <D> [operator]  
[D] Text within these symbols is deleted <D> [A] PERSON <A> who  
[D] Text within these symbols is deleted <D> [either resides in the same household or]  
[D] Text within these symbols is deleted <D> customarily operates an automobile insured under the policy, [A] OTHER THAN A SUSPENSION ISSUED PURSUANT TO SUBDIVISION ONE OF SECTION FIVE HUNDRED TEN-B OF THE VEHICLE AND TRAFFIC LAW; <A>

(b) With respect to all other policies:

(i) nonpayment of premium;

(ii) conviction of a crime arising out of acts increasing the hazard insured against;

(iii) discovery of fraud or material misrepresentation;

(iv) discovery of wilful or reckless acts or omissions increasing the hazard insured against;

(v) physical changes in the property insured [A] OCCURRING AFTER ISSUANCE OR LAST ANNUAL ANNIVERSARY DATE OF THE POLICY <A> which result in the property becoming uninsurable [A] IN ACCORDANCE WITH THE INSURER'S OBJECTIVE, UNIFORMLY APPLIED UNDERWRITING STANDARDS IN EFFECT AT THE TIME THE POLICY WAS ISSUED OR LAST VOLUNTARILY RENEWED; <A> or

(vi) a determination by the superintendent that the continuation of the policy would violate or would place the insurer in violation of this chapter;

(c) The provisions of this subdivision shall apply to each and every coverage or limit afforded under the policy.

(5) No notice of nonrenewal

[D] Text within these symbols is deleted <D> OR CONDITIONAL RENEWAL  
[D] Text within these symbols is deleted <D> of a covered policy shall be issued to become effective during the required policy period unless it is based upon a ground for which the policy could have been cancelled  
[D] Text within these symbols is deleted <D> [.]  
[D] Text within these symbols is deleted <D> [A] OR, WITH RESPECT TO AUTOMOBILE INSURANCE POLICIES, UNLESS IT IS BASED UPON ONE OR MORE OF THE FOLLOWING GROUNDS WHICH

OCCURRED DURING THE THIRTY-SIX MONTH PERIOD ENDING ON THE LAST DAY OF THE FOURTH MONTH PRECEDING THE MONTH OF THE EFFECTIVE DATE OF SUCH NOTICE OF NON-RENEWAL OR CONDITIONAL RENEWAL: <A]

[A> (A) WHERE A NAMED INSURED AND/OR ANY OTHER PERSON WHO CUSTOMARILY OPERATES AN AUTOMOBILE INSURED UNDER THE POLICY IS CONVICTED OF ANY OF THE FOLLOWING: <A]

[A> (I) OPERATING A MOTOR VEHICLE WHILE INTOXICATED OR IMPAIRED BY THE CONSUMPTION OF ALCOHOL; OR <A]

[A> (II) OPERATING A MOTOR VEHICLE WHILE IMPAIRED BY THE USE OF A DRUG (WITHIN THE MEANING OF SECTION ELEVEN HUNDRED NINETY-TWO OF THE VEHICLE AND TRAFFIC LAW); OR <A]

[A> (III) HOMICIDE OR ASSAULT ARISING OUT OF THE USE OR OPERATION OF A MOTOR VEHICLE, OR CRIMINAL NEGLIGENCE IN THE USE OR OPERATION OF A MOTOR VEHICLE RESULTING IN THE INJURY OR DEATH OF ANOTHER PERSON, OR USE OR OPERATION OF A MOTOR VEHICLE DIRECTLY OR INDIRECTLY IN THE COMMISSION OF A FELONY; OR <A]

[A> (IV) OPERATING A MOTOR VEHICLE IN EXCESS OF THE SPEED LIMIT, OR IN A RECKLESS MANNER, WHERE INJURY OR DEATH RESULTS THEREFROM; OR <A]

[A> (V) OPERATING A MOTOR VEHICLE IN EXCESS OF THE SPEED LIMIT, OR RECKLESS DRIVING, OR ANY COMBINATION THEREOF, ON THREE OR MORE OCCASIONS; OR <A]

[A> (VI) OPERATING A MOTOR VEHICLE INSURED UNDER THE POLICY WITHOUT A VALID LICENSE OR REGISTRATION IN EFFECT (EXCEPT WHEN THE PERSON CONVICTED HAD POSSESSED A VALID LICENSE OR REGISTRATION WHICH HAD EXPIRED AND WAS SUBSEQUENTLY RENEWED), OR DURING A PERIOD OF REVOCATION OR SUSPENSION THEREOF, OR IN VIOLATION OF THE LIMITATIONS APPLICABLE TO A LICENSE ISSUED PURSUANT TO ARTICLE TWENTY-ONE OR ARTICLE TWENTY ONE-A OF THE VEHICLE AND TRAFFIC LAW; OR <A]

[A> (VII) OPERATING A MOTOR VEHICLE WHILE SEEKING TO AVOID APPREHENSION OR ARREST BY A LAW ENFORCEMENT OFFICER; OR <A]

[A> (VIII) FILING OR ATTEMPTING TO FILE A FALSE OR FRAUDULENT AUTOMOBILE INSURANCE CLAIM, OR KNOWINGLY AIDING OR ABETTING IN THE FILING OR ATTEMPTED FILING OF ANY SUCH CLAIM; <A]

[A> (IX) LEAVING THE SCENE OF AN ACCIDENT WITHOUT REPORTING; OR <A]

[A> (X) FILING A FALSE DOCUMENT WITH THE DEPARTMENT OF MOTOR VEHICLES, OR USING A LICENSE OR REGISTRATION OBTAINED BY FILING A FALSE DOCUMENT WITH THE DEPARTMENT OF MOTOR VEHICLES; OR <A]

[A> (XI) OPERATING A MOTOR VEHICLE IN A RACE OR SPEED TEST; OR <A]

[A> (XII) KNOWINGLY PERMITTING OR AUTHORIZING AN UNLICENSED DRIVER TO OPERATE A MOTOR VEHICLE INSURED UNDER THE POLICY. <A]

[A> (B) WHERE A NAMED INSURED OR ANY OTHER PERSON WHO OPERATES A MOTOR VEHICLE INSURED UNDER THE POLICY IS INDIVIDUALLY OR ARE AGGREGATELY INVOLVED IN THREE OR MORE VEHICLE ACCIDENTS WHILE OPERATING A MOTOR VEHICLE INSURED UNDER THE POLICY,

RESULTING IN EITHER (1) PERSONAL INJURY; OR (2) PROPERTY DAMAGE IN EXCESS OF TWO HUNDRED DOLLARS. FOR THE PURPOSE OF THIS PARAGRAPH ANY OF THE FOLLOWING OCCURRENCES INVOLVING A MOTOR VEHICLE OPERATED BY A NAMED INSURED OR SUCH OTHER PERSON SHALL NOT BE CONSIDERED AN ACCIDENT: <A]

[A> (I) SUCH MOTOR VEHICLE WAS STRUCK IN REAR; OR <A]

[A> (II) SUCH MOTOR VEHICLE WAS STRUCK WHILE LEGALLY PARKED; OR <A]

[A> (III) ONLY THE OPERATOR OF ANOTHER MOTOR VEHICLE INVOLVED IN THE ACCIDENT WAS CONVICTED OF A CRIME, OFFENSE OR VIOLATION CONTRIBUTING TO THE ACCIDENT; OR <A]

[A> (IV) THE NAMED INSURED OR OTHER OPERATOR OF THE MOTOR VEHICLE INSURED UNDER POLICY, OR THE INSURER THEREOF, WAS REIMBURSED BY, OR ON BEHALF OF, A PERSON RESPONSIBLE FOR THE ACCIDENT OR HAS A JUDGMENT AGAINST SUCH PERSON. WHERE MORE THAN ONE MOTOR VEHICLE IN A HOUSEHOLD IS INSURED BY THE SAME INSURER, THE NUMBER OF ACCIDENTS WHICH WOULD PERMIT CONDITIONAL RENEWAL OR NON-RENEWAL SHALL, AS FOR THE AGGREGATE, BE INCREASED BY TWO FOR EACH ADDITIONAL MOTOR VEHICLE INSURED. FOR THE PURPOSES OF THIS PARAGRAPH ACCIDENTS OCCURRING AS A RESULT OF THE USE OR OPERATION OF A MOTOR VEHICLE IN RESPONSE TO AN EMERGENCY, WHERE THE OPERATOR WAS (I) RESPONDING TO A CALL OF DUTY AS A PAID OR VOLUNTEER MEMBER OF ANY POLICE OR FIRE DEPARTMENT, FIRST AID SQUAD, OR OF ANY LAW ENFORCEMENT AGENCY; OR (II) WAS PERFORMING ANY OTHER GOVERNMENTAL FUNCTION IN A PUBLIC EMERGENCY, SHALL NOT BE ACCIDENTS WHICH AFFORD AN INSURER THE RIGHT TO CANCEL OR TO REFUSE TO RENEW. <A]

[A> (C) WHERE THERE IS A MATERIAL CHANGE IN THE TYPE OF MOTOR VEHICLE INSURED WHICH SO SUBSTANTIALLY INCREASES THE HAZARD INSURED AGAINST AS TO RENDER THE MOTOR VEHICLE UNINSURABLE IN ACCORDANCE WITH THE INSURER'S OBJECTIVE, UNIFORMLY APPLIED UNDERWRITING STANDARDS IN EFFECT AT THE TIME THE POLICY WAS ISSUED OR LAST VOLUNTARILY RENEWED AND <A]

[A> WHICH ARE CURRENTLY IN EFFECT, PROVIDED, HOWEVER, THAT IF THE INSURED MOTOR VEHICLE IS UNINSURABLE FOR PHYSICAL DAMAGE COVERAGES ONLY, THE INSURER MUST OFFER TO RENEW THE POLICY WITHOUT THE PHYSICAL DAMAGE COVERAGES. <A]

[A> (D) WHERE SUCH OTHER OBJECTIVE, UNIFORMLY APPLIED STANDARDS FOR CANCELLATION OR NON-RENEWAL EXIST, AS MAY BE PRESCRIBED BY REGULATION PROMULGATED BY THE SUPERINTENDENT. <A]

[A> (E) PARAGRAPHS (A), (B), (C) AND (D) OF THIS SUBDIVISION SHALL NOT BE APPLICABLE TO POLICIES IN FORCE ON THE EFFECTIVE DATE OF THIS ACT UNTIL THE EXPIRATION OF THEIR REQUIRED POLICY PERIOD, BUT SHALL BE APPLICABLE TO THOSE POLICIES OTHERWISE REQUIRED TO BE RENEWED FOR AN ADDITIONAL POLICY PERIOD PURSUANT TO SUBDIVISION SIX OF THIS SECTION. <A]

[A> IF AN INSURER HAS THE RIGHT TO CANCEL OR REFUSE TO RENEW A POLICY SUBJECT TO THE PROVISIONS OF THIS SUBDIVISION, IT MAY, IN LIEU OF CANCELLATION OR NON-RENEWAL, CONDITION RENEWAL OR CONTINUATION OF SUCH POLICY UPON REDUCTION OF LIMITS OR ELIMINATION OF ANY COVERAGE NOT REQUIRED BY LAW, IF WRITTEN NOTICE OF SUCH INTENTION IS MAILED OR DELIVERED TO THE INSURED AT THE ADDRESS SHOWN IN THE POLICY AT LEAST TWENTY DAYS PRIOR TO THE EFFECTIVE DATE OF SUCH ACTION. <A]

§ 3. Subdivision six of section one hundred sixty-seven-a of such law, is hereby repealed and a new subdivision six is added thereto to read as follows:

[A> (6) THE PROVISIONS OF THIS SUBDIVISION ARE APPLICABLE ONLY TO AUTOMOBILE INSURANCE POLICIES IN EFFECT ON OR BEFORE JULY THIRTY-FIRST, NINETEEN HUNDRED SEVENTY-THREE WHICH WERE RENEWED BY NAMED INSURED IN ACCORDANCE WITH THE PROVISIONS OF SECTION SEVEN OF CHAPTER THIRTEEN OF THE LAWS OF NINETEEN HUNDRED SEVENTY-THREE AND FORMER SUBDIVISION SIX OF THIS SECTION FOR THREE SUCCESSIVE ANNUAL POLICY PERIODS COMMENCING WITH THE FIRST ANNIVERSARY DATE OF SUCH POLICIES ON OR AFTER AUGUST FIRST, NINETEEN HUNDRED SEVENTY-THREE AND ON OR BEFORE JULY THIRTY-FIRST, NINETEEN HUNDRED SEVENTY-FOUR. <A]

[A> A NAMED INSURED SHALL BE ENTITLED TO RENEW SUCH POLICY, UPON TIMELY PAYMENT OF PREMIUM, FOR ONE ADDITIONAL ANNUAL POLICY PERIOD COMMENCING AT THE NEXT ANNUAL ANNIVERSARY DATE OF THE POLICY ON OR AFTER AUGUST FIRST, NINETEEN HUNDRED-SEVENTY-SIX AND ON OR BEFORE JULY THIRTY-FIRST, NINETEEN HUNDRED SEVENTY-SEVEN, PROVIDED, HOWEVER, THAT AN INSURER SHALL HAVE THE RIGHT TO CANCEL OR TO REFUSE TO RENEW SUCH POLICY IF GROUNDS FOR CANCELLATION EXIST PURSUANT TO PARAGRAPH (A) OF SUBDIVISION THREE OF THIS SECTION OR IF ANY OF THE GROUNDS FOR NON-RENEWAL SPECIFIED IN SUBDIVISION FIVE OF THIS SECTION HAVE OCCURRED DURING THE THIRTY-SIX MONTH PERIOD ENDING ON THE LAST DAY OF THE FOURTH MONTH PRECEDING THE ANNUAL ANNIVERSARY DATE. <A]

§ 4. Paragraph (a) of subdivision nine of section one hundred sixty-seven-a of such law, as added by chapter one thousand seventy-two of the laws of nineteen hundred seventy-four, is hereby amended to read as follows:

(a) Where an insurer [A> OR AN AGENT WHO IS AUTHORIZED BY SUCH INSURER TO ACCEPT OF INSURANCE FROM LICENSED AGENTS OR BROKERS, <A] notifies a licensed agent or broker that its contract or account shall be terminated: (i) with respect to a policy required to be continued by this section, the insurer shall offer to continue the policy for any remaining part of the required policy period and the insurer shall offer to continue the policy through

[D> Text within these symbols is deleted <D] [such]

[D> Text within these symbols is deleted <D] [A> THE TERMINATED <A] agent or broker for at least its one year policy period which commences within one year following

[D> Text within these symbols is deleted <D] [receipt by]

[D> Text within these symbols is deleted <D] the [A> DATE OF MAILING OR DELIVERY TO THE TERMINATED <A] agent or broker of written notice of

[D> Text within these symbols is deleted <D] [such]

[D> Text within these symbols is deleted <D] termination [A> OF SUCH CONTRACT OR ACCOUNT, AND THEREAFTER, AT THE SPECIFIC REQUEST OF THE INSURED, SHALL OFFER TO CONTINUE THE POLICY THROUGH SUCH TERMINATED AGENT OR BROKER FOR ANY REMAINING PART OF THE REQUIRED POLICY PERIOD; <A] and (ii) with respect to all new business offered by such terminated agent or broker which is subject to the provisions of this section, the insurer shall accept all such business meeting the insurer's then current underwriting standards during the period of one hundred twenty days next following

[D> Text within these symbols is deleted <D] [receipt by]

[D> Text within these symbols is deleted <D] [A> the date of mailing or delivery to <A] the agent or broker of written notification of such termination. The terminated insurance agent or broker shall be entitled to receive commissions on account of all business continued or written pursuant to this paragraph at the insurer's prevailing commission rate for such

[D> Text within these symbols is deleted <D] [business]

[D> Text within these symbols is deleted <D] [A> LINES OF INSURANCE. <A]

§ 5. This act shall take effect on the first day of August, nineteen hundred seventy-six and all notices required for the timely implementation of this act may be given prior to the effective date. All actions necessary to prepare for the implementation of this act may be taken prior to the effective date.

NOTE.--Section 167-a(6) contains obsolete renewal provisions applicable to policies insuring motor vehicles.