

Arkansas Insurance Department

Mike Beebe
Governor



Jay Bradford
Commissioner

DIRECTIVE NO.: 2-2009

TO: ALL LICENSED PROPERTY AND CASUALTY INSURANCE COMPANIES,
ALL LICENSED RATE SERVICE OR ADVISORY ORGANIZATIONS, AND
OTHER INTERESTED PARTIES

FROM: ARKANSAS INSURANCE DEPARTMENT

SUBJECT: DIRECTIVE ON CANCELLATIONS, NONRENEWALS, NEW POLICIES
AND DISCRIMINATORY UNDERWRITING PRACTICES FOR PROPERTY
AND CASUALTY

DATE: AUGUST 3, 2009

The Department recognizes that Arkansas law imposes minimal restrictions on underwriting. However, the Department expects property and casualty insurers to give proper attention to the explicit rights of their policyholders to be treated with fairness. If a policyholder has complied with the contractual requirements of the policy, that policyholder should be assured of the company's reasonable and prudent compliance with its contractual obligations.

The following directives are important and require your compliance. The Arkansas Code is available online at <http://www.arkleg.state.ar.us/SearchCenter/Pages/arkansascode.aspx>. New Acts are available on the state legislature's website: <http://www.arkleg.state.ar.us/>.

1. No insurance policy shall be cancelled or nonrenewed solely due to claims arising from natural causes, under Ark. Code Ann. § 23-63-109. Clearly, for an insurer to cancel or non-renew an insured who has only sustained a weather or "act of nature"-related loss(s) and who still meets the insurer's underwriting guidelines is contrary to the intent of Ark. Code Ann. § 23-63-109 and other statutes which control cancellation and non-renewal.

The Department interprets the legislature's use of the word "solely" in Ark. Code Ann. § 23-63-109 to mean that claims arising from "natural causes" and that are beyond the insured's control cannot be the event which triggers a non-renewal or cancellation.

Whether the insurer has complied with the intent of Ark. Code Ann. § 23-63-109 will, of necessity, be determined on a case-by-case basis. However, clearly, if an insured has suffered as his last loss one that is weather or "act of nature"-related and that was beyond the insured's control, that loss should not trigger cancellation or non-renewal.

2. No property or casualty insurer shall refuse to underwrite a risk and issue a new policy, or renew a policy, solely based on an insured's past occurrence or history of claims arising from natural causes. Catastrophic and weather-related claims are beyond the control of the insureds and, thus, should not make

them ineligible for new coverage or renewal of coverage. The refusal to underwrite a policy solely based on such losses would potentially amount to unfair discrimination or unfair trade practices.

The Department interprets the word “solely” to mean that claims arising from “natural causes” and that are beyond the insured’s control cannot be the event which triggers a refusal to provide coverage or renewal of coverage.

The Department also prohibits surcharging and tier placement of insureds who have suffer prior weather-related losses. Such a practice would be contradictory to the legislative intent of Ark. Code Ann. § 23-63-109, which protects insureds from being penalized for natural cause events beyond their control.

3. After any property or casualty policy has been in effect for more than sixty (60) days, it cannot be cancelled except for those reasons stated in Ark. Code Ann. § 23-66-206 (9)(A) (covering property and casualty risks other than workers’ compensation and private passenger auto) or Ark. Code Ann. § 23-89-303 (covering private passenger auto only). Loss experience developed during the policy term does not constitute a basis for mid-term cancellation after a policy has been in effect more than sixty (60) days.

No insurer shall cancel mid-term a property or casualty insurance policy unless a written notice of cancellation is mailed or delivered to the last known mailing address of the named insured and any loss payee at least twenty (20) days prior to the effective date of the cancellation, with not less than ten (10) days notice for nonpayment of premium. Ark. Code Ann. §§ 23-66-206(9)(B) and 23-89-304.

4. If a rate revision on a commercial policy, other than workers’ compensation, medical malpractice, title, or large commercial policies, results in a premium increase equal to or greater than twenty-five percent (25%) on any renewal policy issued for a term of twelve (12) months or less, the insurer is required to give the agent not less than thirty (30) days’ notice and the insured not less than ten (10) days’ notice. If the notice is not timely given, the insurer is required to extend the existing policy thirty (30) days from the date such notice is mailed or delivered. The premium for the policy as extended cannot be more than the pro-rata premium of the existing policy. Ark. Code Ann. § 23-79-307(6).

5. If a rate revision on a workers’ compensation insurance policy, employers’ liability insurance policy, or a professional liability insurance policy results in a premium increase equal to or greater than twenty-five percent (25%) on any renewal, the insurer is required to give the agent not less than sixty (60) days notice and the insured not less than thirty (30) days notice. If the notice is not timely given, the insurer is required to extend the existing policy sixty (60) days from the date such notice is mailed or delivered. The premium for the policy as extended cannot be more than the pro-rata premium of the existing policy. Ark. Code Ann. § 23-79-151(a), as amended by Act 1790 of 2003.

6. Except in the case of non-payment of premium, an insurer shall renew a policy for most commercial lines, including workers’ compensation and professional liability but excluding title insurance and surety, unless a written notice of non-renewal is mailed at least sixty (60) days prior to the expiration date or anniversary date of the policy. Ark. Code Ann. § 23-79-307(7); Ark Code Ann. § 23-79-151(b), as amended by Act 1790 of 2003. If the insurer misses this window for written notice, the insurer must remain on the risk for an additional twelve (12) months at substantially the same policy conditions and rates. Realistic rate adjustments for market conditions and changes in the risk are acceptable.

For personal lines property and casualty policies, the insurer shall send either a written notice of nonrenewal or an offer of renewal at least thirty (30) days prior to the policy’s expiration date. The insurer shall send the insured a written notice and the producer a written or electronic notice of the

renewal offer indicating the new premium and describing any changes in the deductible or policy provisions. Ark. Code Ann. §§ 23-88-105 and 23-89-305(a), as amended by Act 1790 of 2003. These requirements do not apply in case of nonpayment of premium.

An insurer may cancel an automobile liability policy if the named insured or any driver of the insured vehicle is convicted of driving while intoxicated. Ark. Code Ann. § 23-89-303. A carrier may not cancel until there is a conviction, since a policy cannot be canceled solely for the suspension or revocation of the driver's license at the time of arrest. Ark. Code Ann. § 27-22-106.

7. Insurers should not cancel or non-renew any property and casualty insurance policy solely because the policyholder (a) has attained the age of 65 or older; (b) is physically impaired, provided the automobile is equipped with compensating devices; or (c) is a member on active duty in the Armed Forces. Ark. Code Ann. § 23-66-206(14); 50 App. U.S.C.A. § 501, et seq.

Insurers shall not permit discrimination against any person(s) because of race, creed, color, national origin, citizenship, or gender, in the issuance or renewal of any policy of insurance, or in the fixing of rates, terms or conditions. Ark. Code Ann. §23-66-206(14); Ark. Code Ann. § 23-67-208. Insurers and producers should make every effort to renew and institute coverage on low value or multiple-family dwelling risks. The amount of coverage on such risks should bear a reasonable relationship to the fair value of the property involved and should not be arbitrarily predetermined.

8. Neither the lack of "balance" in an insurance agency's underwriting portfolio nor its high loss ratio or low premium volume should be the predominant factor when a decision is made regarding cancellation or non-renewal of an individual property and casualty risk.

9. In the event of a policy cancellation or nonrenewal, the property and casualty insurer should extend every assistance to policyholders and producers to facilitate the orderly transfer of the policyholder's business to a different insurer. Under Ark. Code Ann. § 23-79-306(8), insurers must provide loss histories on claims-made policies, excluding workers' compensation, medical malpractice, title or surety, within fifteen (15) days after policy cancellations or non-renewals are issued and within thirty (30) days after the insured's request. Under Ark. Code Ann. § 23-66-318, a vendor of loss history information for personal lines property and casualty coverage shall furnish a loss history report to the insured without charge if the insured requests the information within thirty (30) days after receipt of a notification of declination, cancellation, non-renewal, or reduction in coverage. If the insured requests the loss history information later than thirty (30) days after receipt of such notice, the vendor may impose a reasonable charge for the disclosure.

10. If the relationship between insurer and producer is terminated, it shall be the responsibility of both the insurer and the producer to provide uninterrupted coverage for the policyholder to the normal expiration date of his policy.

Under Ark. Code Ann. § 23-64-230(a)(1), applicable to fire and casualty policies only, an insurer must give the policyholder a renewal of the contract for a period of twelve (12) months upon the insurer's termination of the producer appointment, if the risk meets the company's underwriting rules. If the policy does not meet underwriting rules, then the insurer must give the agent sixty (60) days notice of the intent to non-renew the policy, under Ark. Code Ann. § 23-64-230(a)(2).

11. A personal lines property and casualty insurer shall not deny, cancel, non-renew, or base a renewal rate solely on the basis of credit information, without consideration of any other underwriting

factors. Insurers must provide the required information if the insurer takes an “adverse action,” as defined by the law, based on credit information. An insurer shall not use a credit score calculated using income, gender, address, zip code, ethnic group, religion, marital status, or nationality of the consumer as a factor. Ark. Code Ann. § 23-67-405 [effective Jan. 1, 2004]. Please note that the current directive on credit scoring, Directive 2-2002, is superseded by the new law and is no longer valid.

12. In the first sixty (60) days of coverage, policy cancellation is governed by the terms of the policy. See Ark. Code Ann. § 23-66-206(9)(a) for post 60 day cancellations.

13. Arkansas Code Ann. § 23-63-110 states that an insurer may not cancel a policy nor increase the premium for a policy solely due to claims made under the policy that do not result in a loss to the insurer. For purposes of this provision, “claims” are not a request for policy information, nor a discussion between an insured and an insurer or producer as to whether a claim should be made under an insurance policy or whether an event is covered under an insurance policy. A defense under a liability policy is a policy benefit, so the provision of a defense could be considered a “claim.” The investigation of a claim that the insurer ultimately decides not to pay does not constitute a “claim.” This provision shall not apply to the business of workers’ compensation, life, accident and health, or long-term care insurance.

Insurers are to provide copies of this Directive to their producers within thirty (30) days following receipt of this Directive.

This Directive supersedes and replaces Directive 1A-2004, “Cancellations, Nonrenewals and Discriminatory Underwriting Practices for Property and Casualty”.

For questions regarding this Directive, please contact Bill Lacy, Director Property & Casualty Division at 501-371-2800 or via email at Insurance.PnC@arkansas.gov.

(signed by Jay Bradford)

JAY BRADFORD
ARKANSAS INSURANCE COMMISSIONER

August 3, 2009

DATE