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Drivers losing a right to appeal

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Insurers to decide on surcharges

By Jeffrey Krasner, Globe Staff | March 2, 2009

Some Massachusetts drivers could pay hundreds of dollars more for insurance under a state plan to eliminate the board that allows them to contest auto accident surcharges.

The Division of Insurance Board of Appeal, which hears about 50,000 surcharge cases annually, is scheduled to be dissolved April 1, said insurance commissioner Nonnie Burnes. The board is no longer needed, she said, because insurance companies now set their own rates, including penalties for drivers deemed responsible for accidents.

Before last year's implementation of a "managed competition" system, premium rates and surcharges levels were dictated by the state. Now, motorists unhappy with their bills can switch to an insurer with more lenient policies on accidents, Burnes said.

"We're trying to develop a system where the insurers are more responsive to customers," she said of the move to eliminate the appeals board.

Currently, insurers can increase premiums by levying surcharges if they determine a driver is more than 50 percent to blame for a collision. Such penalties often cost hundreds of dollars annually for up to six years. About half of the 50,000 cases disputed each year are overturned by the appeals board. Those drivers are issued re funds.

As the April deadline to dissolve the board nears, however, a move to save it is underway on Beacon Hill. State Senator Stephen J. Buoniconti, Democrat of West Springfield and chairman of the Joint Committee on Financial Services, said more than half the members of the House and Senate have cosigned a bill that would require Burnes to maintain the appeals board.

"I'm getting more calls about this bill than any other issue," Buoniconti said. He said it was unclear when the legislation might go to a vote in the Senate.

Last week, the union representing workers at the Division of Insurance distributed leaflets in support of the board at four state government buildings.

The state's new insurance system is intended to save drivers money by spurring competition among insurers on price, service, and features. The rules governing the system also included doing away with the appeals board. That has angered some consumer advocates.

"Consumers should have an independent board to challenge a decision that could result in hundreds of dollars a year in higher premiums," said Deirdre Cummings, legislative director for the Massachusetts Public Interest Research Group, an advocacy organization. "This is a straight-up consumer protection."

Burnes said she isn't inclined to seek a change in the law to preserve the appeals board. The current process is anticonsumer, she said, because drivers must pay \$50 for a hearing. It generally takes six months for a case to be heard.

However, an improperly assessed surcharge can cost a driver hundreds or thousands in extra premiums. Insurance companies have great latitude to decide how much extra to charge a driver for an accident. That surcharge lasts for as long as six years, according to insurance companies and agents.

Burnes said drivers who believe they were improperly found at fault can shop for an insurer that won't charge them extra. The option, called "accident forgiveness," is a new feature that some insurance companies offer under the new competitive system. It will force some drivers to seek "forgiveness" for accidents that aren't their fault.

Frank Mancini, president of the Massachusetts Association of Insurance Agents, which supports keeping the board, said the savings offered by accident forgiveness programs won't help all motorists because switching insurers won't necessarily lower a driver's bill.

"The accident follows you," said Mancini. "It doesn't go away if you move to another insurer."

Burnes has proposed a system in which insurance companies would give customers assessed surcharges the opportunity for two reviews. Consumers could also file a complaint with the division, though there would not be a formal review.

"They can call us," said Burnes. "We'll help them navigate the system."

Mancini said he is skeptical of the plan.

"Companies review claims all the time," he said. "We don't find them changing their decisions very often."

Glenn Greenberg, a spokesman for Liberty Mutual Group, the national insurance company based in Boston, said ending the appeals board is "logical."

"Massachusetts drivers hold a distinct advantage in that if they feel they're treated unfairly, or if they're not happy with the price or outcome of an appeal, they now have the great consumer protection of going out and shopping the market for a company that will treat them better," said Greenberg.

Burnes said she also opposes the current process because some surcharges may be reversed by the board in cases where a motorist is genuinely at fault. She said she does not know how many surcharges are wrongly overturned.

"I would have to look at every file going back a year," she said.

Burnes's comments highlight some of the dynamics of the Massachusetts auto insurance market, where most policies are sold through independent agents. Agents receive commissions for selling policies, and are primarily concerned with keeping customers satisfied so they renew their policies. Insurance companies, however, have an interest in levying accident-based surcharges because they help pay for accident claims, and to raise the rates of high-risk drivers.

"I hear from agents who say they send customers to the board of appeal because they are lenient," said Burnes.

The board has 15 full-time members. They hear as many as 25 cases a day at various locations, including Registry of Motor Vehicles offices. There is a wait of about six months for a case to be heard. Insurance agents in favor of preserving the appeals board say it generates about \$2 million a year for the state. The Division of Insurance said the surplus is about \$300,000.

Burnes said eliminating the board is likely to generate criticism from drivers.

"We'll probably see an uptick in complaints as people try to figure out the new system," she said. "I think this new system is going to work, but I don't know that."

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