

Arkansas Insurance Department

Mike Huckabee
Governor



Julie Benafield Bowman
Commissioner

September 27, 2005

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TO: ALL LICENSED PROPERTY AND CASUALTY INSURERS, SURPLUS LINES INSURERS, MOTOR CLUBS, TRADE ORGANIZATIONS, NATIONAL ASSOCIATION OF INSURANCE COMMISSIONER AND OTHER INTERESTED PARTIES

FROM: ARKANSAS INSURANCE DEPARTMENT

SUBJECT: ACT 1194 OF 2005

Act 1194 of 2005 states that no insurer licensed to transact the business of motor vehicle liability insurance in this state shall cancel an insured's policy, increase the premium, or negatively impact the insured's risk rating solely because of an accident for which the insured is innocent of any negligent or intentional act that was the proximate cause of the accident, regardless of whether a claim is filed under any insurance policy. A "proximate cause" is a cause which, in a natural and continuous sequence, produces damage and without which the damage would not have occurred.

The Department has received several requests for an interpretation of this Act.

1. The Act only applies to commercial and personal motor vehicle liability insurance.
2. We interpret "innocent" to mean not at fault with regard to any negligent or intentional act that was the proximate cause of any accident or injury, to be determined in accordance with policy language and state law. If a carrier pays any portion of a claim, such payment is indication that the carrier has determined that the insured has some percentage of fault and is therefore not "innocent." Cost of defense shall not be a factor in determining whether a person is "innocent." Cost of defense may, however, be considered a "loss" under Ark. Code Ann. § 23-63-110, as further explained below.
3. Clearly, for an insurer to cancel an insured's policy, increase the premium, or negatively impact the insured's risk rating *solely* because of an accident for which the insured is not at fault is contrary to the intent of Act 1194 of 2005. (emphasis added) The Department interprets the legislature's use of the word "solely" in Act 1194 to mean that an accident for which the insured is innocent of any negligent or intentional act that was the proximate cause of the accident cannot be the event which triggers a cancellation, premium increase, or negative risk rating.

Whether the insurer has complied with the intent of Act 1194 will, of necessity, be determined on a case-by-case basis. However, clearly, if an insured has suffered as his

last loss an accident for which he is not at fault, that loss should not trigger cancellation, premium increase or a negative risk rating.

4. Arkansas Code Ann. § 23-63-110 (amended by Section 4 of Act 1697 of 2005) 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. This statute will only interact with Act 1194 with regard to commercial and personal motor vehicle liability policies. Section (c) of Act 1194 allows an insurer to cancel, nonrenew, or revise a rating if allowed by another statute; Ark. Code Ann. § 23-63-110 allows a carrier to cancel or increase a premium if the carrier suffers a “loss” as defined in the statute. Therefore, even if an insured is not at fault for an accident, the carrier can still cancel or increase the premium if the carrier suffered a loss for that accident. For instance, if the carrier contests liability and the matter is tried in court, the insured may be found to have no fault, but the carrier still suffered a loss by providing a defense under the policy. Another such “loss” could include the hiring of an accident reconstructionist to determine fault. Routine loss adjustment expenses would not be considered a “loss.”

All property & casualty insurers, surplus lines insurers, and motor clubs are instructed to provide copies of this Bulletin to their Arkansas-licensed producers. Questions concerning this Bulletin should be directed to the Arkansas Insurance Department Legal Division at 501-371-2820 or e-mail at insurance.legal@arkansas.gov.

(signed by Julie Benafield Bowman)

(September 27, 2005)

JULIE BENAFIELD BOWMAN
INSURANCE COMMISSIONER
STATE OF ARKANSAS

DATE