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ARS § 20-263(A) and Premium Increases for Not-At-Fault Accidents

Pursuant to Arizona Revised Statutes (ARS) §§ 41-1001(22) and -1091, the Arizona Department of Insurance and Financial Institutions (Department) occasionally issues Substantive Policy Statements to provide guidance regarding common compliance matters or recurring questions identified through the Department's review of market analysis, consumer complaints and product filings. Department Substantive Policy Statements are intended to promote a level playing field and uniform application of statutory or regulatory provisions.

I. Purpose

The purpose of this Substantive Policy Statement is to address how ARS § 20-263(A) applies to an insurer's use of historical accident data when determining the premium for an automobile insurance policy.

II. Scope

This Substantive Policy Statement is intended to provide guidance to all property and casualty insurers that sell automobile insurance to Arizona consumers and is directed to all property and casualty insurers, insurance rating organizations and agencies, insurance underwriters, producers, and interested parties.

III. Background

The Department has observed a number of rate/rule filings and consumer complaints that include or reference the practice of applying rating factors to policy premiums based on historical vehicle data, including prior property damage and salvaged vehicle title status. This practice raises the question of whether such data may be used in establishing automobile insurance premiums under ARS § 20-263(A). Pursuant to ARS §§ 41-1001(22) and -1091, on October 9, 2020, the Department issued a Notice of Opportunity to Comment in which it stated its intent to

¹ This substantive policy statement is advisory only. A substantive policy statement does not include internal procedural documents that only affect the internal procedures of the agency and does not impose additional requirements or penalties on regulated parties or include confidential information or rules made in accordance with the Arizona administrative procedure act. If you believe that this substantive policy statement does impose additional requirements or penalties on regulated parties you may petition the agency under section 41-1033, Arizona Revised Statutes, for a review of the statement.

address ARS § 20-263(A) in a Substantive Policy Statement that would set forth the Department's interpretation of the statute and provide guidance as to when insurers may use historical vehicle data consistent with the statute. The Department solicited comments from interested parties regarding ARS § 20-263(A) and how vehicle history data is used to establish automobile insurance premiums. The Department received, reviewed, and considered numerous comments in the course of crafting this Substantive Policy Statement.

IV. Department Position

As relevant to this Substantive Policy Statement, ARS § 20-263(A) provides:

No insurer shall increase the motor vehicle insurance premium of an insured as a result of an accident not caused or significantly contributed to by the actions of the insured. Any insurer which increases the premium as a result of accident involvement shall notify the insured of the reason for such increase.

A. Scope of ARS § 20-263(A)

The Department interprets ARS § 20-263(A) to require a particular limitation on insurers regarding the automobile insurance underwriting process, and the Department therefore concludes that ARS § 20-263(A) prohibits premium increases for “an accident not caused or significantly contributed to by the actions of” both currently insured drivers and those seeking new coverage. Broadly construing the term “insured” is consistent with the statute's evident purpose of establishing a limitation on the underwriting process, which is to protect insurance consumers from motor vehicle premium increases due to accidents not caused or significantly contributed to by the insured.

Although the term “insured” as used in ARS § 20-263(A) is not defined, the Department concludes that distinguishing between drivers who are “insured” and “applicants” seeking a new policy is not warranted. Because the statute's main effect is to place a limitation on the insurance underwriting process, applying a distinction between “insured” and “applicants” here would create inequitable and absurd results. Ultimately, the Department is aware of no significant difference in underwriting premiums for drivers that currently possess insurance versus those seeking insurance. Industry's comments submitted to the Department did not identify any significant difference in underwriting premiums for their insureds and new applicants. In addition, broadly construing the term “insured” to include applicants to whom an insurance company has quoted a premium allows for effectuating the plain meaning of the term “premium.” Only insureds pay premium, and, of course, once an applicant pays a quoted premium, an applicant becomes insured. At renewal, the same historical data regarding a vehicle ostensibly would be used to calculate a renewal premium.² Therefore, any offered rate to an

² Among the absurd results that would occur in concluding § 20-263(A) applies to “insured” drivers but not “applicants” is that a not-at-fault accident could be considered in establishing an initial premium for an applicant, but upon renewal, the insurance company would need to revise

applicant via a premium quote must comply with ARS § 20-263(A) in the same way that the statute applies to any premium offered to a currently insured policyholder. In other words, both new and renewal rates must comply with ARS § 20-263(A).

In addition, the Department concludes that ARS § 20-263(A) prohibits an insurer from increasing premium on an automobile policy, including surcharges, eliminating discounts, placing the insured in a higher rating tier, or charging a higher base rate, unless the insurer determines and can demonstrate that the insured caused or significantly contributed to the historical damage contained in a vehicle history report. Section 20-263(A) does not distinguish between the vehicle and the driver when it comes to raising premiums; the statute prohibits any increases to the total premium charged for the policy.

B. The Department's interpretation of "accident" in ARS § 20-263(A)

Section 20-263(A) confines the underwriting limitation on insurers to "accident[s] not caused or significantly contributed to by the actions of the insured." The term "accident" is not defined in ARS § 20-263(A). The Department narrowly construes the term "accident" as a loss involving a vehicle's upset/overtake or impact, or what the industry appears to commonly categorize as "collision." Therefore, the Department will apply the term "accident" as consistent with incidents involving a "collision," regardless of the policy coverages under which an associated claim arose, including uninsured/underinsured motorist, comprehensive, and MedPay coverages. In any analysis, the Department considers the key inquiry to be whether the circumstances demonstrate an accident occurred, not what policy coverage shouldered the claim.

C. Vehicle History Scoring Data

As previously described, the Department interprets ARS § 20-263(A) to prevent an insurer's underwriting process from relying on a not-at-fault accident to cause an increase in automobile insurance premium rates. The Department is aware that some insurers use vehicle history scoring data as part of automobile insurance underwriting. At least one major vendor of such data produces reports that include information showing a vehicle's prior accident history, repair and maintenance history, as well as other vehicle-related information. However, this particular vendor's reports do not include information showing the insured's contribution to or fault (or lack thereof) for an accident that affected the vehicle's condition. Without specific information regarding fault or contribution, an insurer using such data as part of its underwriting process could not demonstrate that any premium increase excludes not-at-fault accidents, thus imputing a vehicle's condition and its assumed risks onto individual drivers who may not have caused or contributed to an accident. Accordingly, the Department considers using data that does not demonstrably exclude not-at-fault accidents as being contrary to ARS § 20-263(A), which prohibits raising automobile insurance premiums for accidents not caused or significantly contributed to by insureds.

its underwriting criteria for the same driver to ensure that the accident was not considered in providing the renewal quote.

D. Additional Considerations

The Department's reading of ARS § 20-263(A) has two other notable considerations regarding permissive drivers and salvage titles. First, as noted previously, the Department considers ARS § 20-263(A) to broadly limit underwriting considerations that would result in a premium increase to a policy for "an accident not caused or significantly contributed to by the actions of the insured," which would include any surcharge to the insured for not-at-fault accidents incurred by a permissive driver. Because permissive drivers generally are considered insured under an automobile policy, a policy premium may not be increased because of a not-at-fault accident involving a permissive driver. Second, ARS § 20-263(A) would prevent insurers from increasing the policy premiums for a vehicle with a salvage certificate unless the insurer can demonstrate either that (1) the insured caused or significantly contributed to the accident that led to the salvage title or (2) the salvage title did not result from an "accident."

V. Conclusion

Since ARS § 20-263's enactment, rating methodologies used by insurers have evolved significantly and the data available to insurers for calculating premiums are becoming much more specific to the individual risks being insured. The Department recognizes that as new types of data become available, industry may want to incorporate relevant, actuarially meaningful data into its underwriting and pricing. Vehicle history reports are a prime example of such a burgeoning data source. However, in using this data, insurers still must comply with current Arizona law and ensure that underwriting decisions are not affected by accidents not caused or significantly contributed to by an insured.

By April 1, 2021, insurers must file necessary corrections to applicable rates and rules and adhere to ARS § 20-263.

Any questions regarding the contents of this memo should be addressed to: PropCas@difi.az.gov

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