

**STATE OF MICHIGAN
DEPARTMENT OF INSURANCE AND FINANCIAL SERVICES**

Bulletin 2015-19-INS

In the matter of

No-fault Auto Insurance: Named Driver Exclusions

**Issued and entered
this 13th day of August 2015
by Patrick M. McPharlin, Director**

This bulletin supersedes Bulletin No. 79-11, dated July 3, 1979.

A no-fault insurance policy must generally cover the person named in the policy, the person's spouse, and a relative of either domiciled in the same household. Section 3009(2) of the Insurance Code (Code), MCL 500.3009(2), provides, however, that at the authorization of the insured, a specified person may be excluded from liability coverage under an automobile insurance policy. If the named excluded person drives the insured vehicle, there is no residual liability insurance in effect, and the owner of the vehicle and those legally responsible for the acts of the driver may be held personally liable for damages and injuries in the event of an accident.

On January 3, 1979, the Michigan Court of Appeals in *Detroit Automobile Inter-Insurance Exchange v Commissioner of Insurance*, 86 Mich. App. 473; 272 N.W. 2d 689 (Mich. Ct. App. 1979) held that named driver exclusions, as provided in Section 3009(2) of the Code, MCL 500.3009(2), do not violate the No-Fault Act, specifically Sections 3101(1), 3131 and 3135, MCL 500.3101(1), MCL 500.3131, and MCL 500.3135.

In addition, effective January 13, 2015, 2014 PA 489, amended Section 3113 of the Code, MCL 500.3113, to add a new subsection (d) which provides that named excluded drivers are not entitled to be paid personal protection insurance benefits.

This informational bulletin is intended to outline the requirements and procedures for the use of named driver exclusions in Michigan and for the filing of named driver exclusion endorsements for approval by the Director.

I. PROVISION OF LAW

Various sections of the Code prescribe requirements for the use of named driver exclusions. The principal provisions are outlined below:

A. NAMED DRIVER EXCLUSION ENDORSEMENTS

Pursuant to Section 2236 of the Code, MCL 500.2236, companies choosing to use named driver exclusions for residual liability coverages must file endorsements providing such exclusions for approval by the Director. The filing of these endorsements should meet current DIFS requirements for rate and form filings. Excluded driver endorsement forms should require the specification of the names of the driver(s) and the coverage(s) to be excluded under the policy to which the endorsement applies.

B. AUTHORIZATION FORM

Section 3009(2) of the Code, MCL 500.3009(2), provides that a named person may be excluded from residual liability coverages only at the authorization of the insured. Each insurer shall provide an authorization form which includes the following:

1. the specific coverage(s) to be excluded,
2. the name(s) of the excluded driver(s),
3. an explanation of the legal consequences in the event a named excluded driver operates the insured vehicle, including:
 - a. That there would be no residual liability insurance in effect and the owner and the operator of the vehicle could be held personally liable for any damages in the event of an accident.
 - b. That the vehicle would be considered uninsured under the no-fault law, and the owner and the operator of the vehicle could be guilty of a misdemeanor and subject to the penalties of Section 3102(2) of the Code, MCL 500.3102(2).
 - c. Because the vehicle is considered uninsured, pursuant to Section 3113(b) of the Code, MCL 500.3113(b), if the owner or registrant of the vehicle is injured in an accident where the vehicle was driven by a named excluded driver, the owner or registrant would not be eligible for any personal injury protection benefits from any no-fault policy or from the assigned claims plan.
 - d. That pursuant to Section 3113(d) of the Code, MCL 500.3113(d), the person operating the motor vehicle or motorcycle as to which he or she was named as an excluded operator is not entitled to be paid personal protection insurance benefits.

The authorization should be dated and signed by the insured, and the insured should receive a copy of the signed authorization. The authorization form should be submitted for review by the Director when filing an excluded driver endorsement.

C. RATING RULES

The rating characteristics of the excluded driver(s) may not be considered in calculating the premium for the affected coverages.

D. WARNING STATEMENT AND NOTICE REQUIREMENTS -- POLICY FORMS

Section 3009(2) of the Code, MCL 500.3009(2), provides that a named driver exclusion is not valid unless the following statement is on the face of the policy or the declarations page of the policy:

Warning -- when a named excluded person operates a vehicle all liability coverage is void — no one is insured. Owners of the vehicle and others legally responsible for the acts of the named excluded person remain fully personally liable.

In addition, pursuant to Section 3113(d) of the Code, MCL 500.3113(d), the face of the policy or the declarations page of the policy should provide notice that a named excluded driver is not entitled to be paid personal protection benefits for accidental bodily injury if at the time of the accident the named excluded driver was operating a motor vehicle or motorcycle as to which he or she was named as the excluded driver. Failure to provide such notice is an unfair and deceptive act or practice as it misrepresents the nature and extent of the coverage afforded in the policy.

The face of the policy or the declarations page of the policy showing the use of the warning statement and notice regarding personal protection benefits should be submitted for review by the Director when filing an excluded driver endorsement.

E. NOTICE REQUIREMENTS — CERTIFICATE OF INSURANCE

Section 3009(2) of the Code, MCL 500.3009(2), provides that a named driver exclusion is not valid unless the warning language required by Section 3009(2) of the Code, MCL 500.3009(2), also appears on the certificate of insurance. In addition, the Motor Vehicle Code provides that the certificate of insurance must list the name(s) of any driver(s) whose operation of the vehicle causes the liability insurance to become void, [MCL 257.328(2)].

II. UNDERWRITING IMPLICATIONS

The named driver exclusion shall be used at the option of the insured. Making the sale or renewal of a policy contingent upon the exclusion of a particular driver will be considered by DIFS to be a refusal or limitation of coverage subject to review under

the provisions of Section 2027 of the Code, MCL 500.2027. Section 3009(2) of the Code, MCL 500.3009(2), allows exclusion from liability coverage for a named driver only; this section may not be used to exclude a class of drivers from residual liability insurance. When an excluded driver endorsement is used, the characteristics of the excluded driver may not be used in determining rates and premiums for the affected coverages.

III. APPLICABILITY TO OTHER COVERAGES

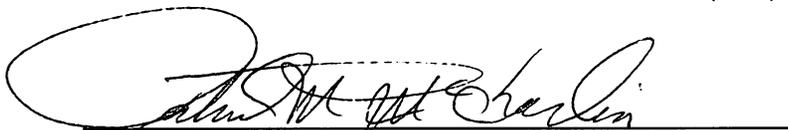
DIFS will continue to approve forms and endorsements providing for the exclusion of named drivers from comprehensive and collision coverages, provided that the characteristics of the named excluded driver are not used in determining rates and premiums for such coverages, and that these exclusions are not used to deny coverage to a class of drivers. Any forms containing exclusion provisions for comprehensive and collision coverages remain subject to approval as provided under Section 2236 of the Code, MCL 500.2236, and other existing guidelines pertaining to rate and form approval.

IV. RIGHTS AND PROCEDURES

In conformity with Section 3(7) of the Administrative Procedures Act of 1969, MCL 24.203(7) these guidelines are a statement of policy that the agency intends to follow, that does not have the force or effect of laws, and that binds the Department but does not bind any other person. DIFS staff shall use these guidelines in reviewing all filings of named driver exclusion endorsements. Any filing which fails to meet the requirements of the Code shall be disapproved pursuant to Section 2236 of the Code, MCL 500.2236.

Any questions regarding this bulleting should be directed to:

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