

STATE OF MICHIGAN
DEPARTMENT OF ENERGY, LABOR AND ECONOMIC GROWTH
OFFICE OF FINANCIAL AND INSURANCE REGULATION
Before the Commissioner of Financial and Insurance Regulation

**In the matter of the exemption of
certain documents and forms from
filing and approval requirements**

Order No. 09-023-M

_____/

**Issued and entered
this 22nd day of May 2009
by Ken Ross
Commissioner**

**ORDER AMENDING PREVIOUS ORDER
EXEMPTING CERTAIN DOCUMENTS AND FORMS
FROM FILING AND APPROVAL REQUIREMENTS**

On January 29, 1997, Commissioner D. Joseph Olson issued his Order Exempting Certain Documents and Forms from Filing and Approval Requirements (“Order”). This Order, which is Order No. 97-010-M, is attached and incorporated by reference.

Commissioner Olson made a sweeping exemption of forms with the exception of six documents and forms listed in the Order. He based his exemption on his finding that the exempted documents and forms were those “to which section 2236 practicably may not be applied or the filing and approval of which are considered unnecessary for the protection of the public.”

The list of six documents and forms did not include personal auto insurance forms and home insurance forms. However, developments in recent years show that the review of these forms is necessary for the protection of the public.

In particular, a Michigan Supreme Court determination made in 2005 dramatically changed the landscape. In *Rory v Continental Ins Co*, 473 Mich 475 (2005), the Court announced that Michigan courts would no longer amend insurance contracts based upon unreasonable clauses. The Court said that it was the responsibility of the Commissioner to review clauses for legality. Thus, policyholders lost their last line of defense in the court system.

Additionally, the clause at issue in *Rory* established a one-year limitation period for uninsured motorist claims. Many policyholders, as with the plaintiffs in that case, could not comply with such clauses, making their coverage illusory. A later survey by the agency found the use of such clauses to be commonplace.

This agency has subsequently spent years securing the removal of these and other unreasonable clauses from auto and home insurance policies as they have been brought to the agency's attention by other court cases, attorneys, and complaints to the agency from policyholders. Additionally, at a public hearing on SERFF filings last year, one interested group specifically called for the prior review and approval of coordinated benefit provisions in personal auto policies.

All of this shows that the protection of the public requires the review of personal auto and home insurance policies before they are put into use. In this way, the agency can disapprove policies in accordance with MCL 500.2236(5):

Upon written notice to the insurer, the commissioner may disapprove, withdraw approval or prohibit the issuance, advertising, or delivery of any form to any person in this state if it violates any provisions of this act, or contains inconsistent, ambiguous, or misleading clauses, or contains exceptions and conditions that unreasonably or deceptively affect the risk purported to be assumed in the general coverage of the policy....

The agency recognizes that insurers will need lead time to meet these reinstated submission requirements.

Therefore, it is ORDERED that:

1. The Order is amended by adding documents and forms to the list as follows:
 7. Documents and forms relating to personal auto insurance.
 8. Documents and forms relating to home insurance.
2. On and after July 1, 2009, insurers shall, prior to use, submit through SERFF new or revised personal auto insurance documents and forms.
3. On and after September 1, 2009, insurers shall, prior to use, submit through SERFF new or revised home insurance documents and forms.



Ken Ross
Commissioner