



STATE OF TENNESSEE
DEPARTMENT OF COMMERCE AND INSURANCE
INSURANCE DIVISION
500 JAMES ROBERTSON PARKWAY 4TH FLOOR
NASHVILLE, TENNESSEE 37243-5065
615-741-2176

December 4, 2012

Robert D. Birkmaier
CPCU, CLU, AVP, Regional Counsel
Office of General Counsel
South Central Regional Office
Nationwide Insurance
840 Crescent Centre Dr., Ste. 300
Franklin, TN 37067-4626

**Re: Interpretive Opinion No. 03-12
Sixty (60) Day Notice Requirement for Revision of Rates**

Dear Mr. Birkmaier:

This letter is written in response to your question regarding the correct interpretation of TENN. CODE ANN. § 56-7-1806(a) involving the sixty (60) days required notice for commercial risk policy rate revisions. You have requested the Insurance Division of the Tennessee Department of Commerce and Insurance ("Division") opine as to whether notice is required in a particular situation involving rate increases, with which your company has been confronted. Your inquiry is being treated as a request for an interpretive opinion from the Division pursuant to TENN. COMP. R. & REGS. 0780-1-77-.01(1).

The facts understood by the Division are as follows:

- Nationwide's commercial team reviews a policy for various reasons. Under review, it is determined that the policy is rated incorrectly.
- The error in the rating may be the result of various factors.
- In order to correct the rating error, the commercial policyholder's premium must be increased in excess of twenty-five percent (25%).
- On occasion, the increase in excess of twenty-five (25%) may be due to a combination of both an upcoming premium increase, and a discovered rating error.

- The increase in rating would only apply to a single policyholder and not multiple policyholders.

RESPONSE:

It is the position of the Division that the above hypothetical requires sixty (60) days notice to a commercial risk policyholder. TENN. CODE ANN. § 56-7-1806(a) states, in pertinent part:

In the event an insurance company intends to increase the premiums of a commercial risk policy by an amount that is more than twenty-five percent (25%) and the increase in premium is the result of comparing policies of equivalent exposures, the insurance company shall mail or deliver to the named insured and producer at the address shown on the policy, not less than sixty (60) days prior notice of its intention to increase the premiums, specifying the percentage of the increase. [Emphasis added].

TENN. CODE ANN. § 56-7-1806(a) (2005). In looking at the plain meaning of the statute, notice is required when “the increase in premium is the result of comparing policies of equivalent exposures”. *Id.* The term “equivalent exposures” refers to policies involving the same or similar insured risks. The plain meaning of TENN. CODE ANN. § 56-7-1806(a) requires, at a minimum, sixty (60) days notice any time an increase over 25% occurs on a policy that has unchanged risk exposure, or similar risk exposure to equivalent policies with premiums that have not increased.

In the event this language is viewed as ambiguous, the above interpretation is further supported by legislative intent and authority previously issued by the Division. The notice statute was amended to its current form in 2005 by the 104th General Assembly. When presented for passage in a Senate Committee meeting the bill was described as “making it very clear that any increase in a premium that is more than twenty-five percent (25%) requires the insurance company to give not less than sixty (60) days notice”. See Senate Committee meeting for Commerce, Labor, & Agriculture on S.B. No. 172, March 22, 2005. In addition, this 2005 legislation followed a 2004 Bulletin issued by Commissioner Paula A. Flowers for the Tennessee Department of Commerce and Insurance. The Bulletin interpreted the previous language of the notice statute, prior to the 2005 legislative amendment. Commissioner Flowers clarified that the notice requirement applied “anytime an intended increase of any of the rates and/or rating factors of a policy exceeds twenty-five percent (25%)”. Paula A. Flowers, Commissioner of the Tennessee Department of Commerce and Insurance, Bulletin: Notification of Rate and Rate Factor Increases on Commercial Risk Policies, March 15, 2004. The Division takes the position that this Bulletin remains the governing authority on the correct interpretation of TENN. CODE ANN. § 56-7-1806(a), despite the 2005 amendatory language. The new 2005 language broadens its previous application to fit the interpretation expressed in Commissioner Flower’s 2004 Bulletin, an interpretation further reinforced by the legislative comments made during the law’s passage.

Based on the plain meaning of the statute, legislative intent, and prior interpretations, the facts provided in your company’s hypothetical would require sixty (60) days notice before an increase exceeding twenty-five percent (25%) can become effective. Under the facts outlined above, the

exposure or risk under the policy has not changed. The increase, in excess of twenty-five percent (25%), is due to a rating error in a policy of equivalent exposures and is therefore subject to the mandatory notice requirement under TENN. CODE ANN. § 56-7-1806(a).

This response by the Division to a specific fact situation relating to the interpretation of the Tennessee Code should not be construed as a legal position or opinion of the Commissioner of Commerce and Insurance, or any other official in the Department of Commerce and Insurance. As each inquiry is reviewed on the specific facts presented, this response is based only on such facts and may not be used as precedent. Any variation in the facts presented to the Division could result in a different conclusion than asserted herein.

If you have any questions regarding this matter, please do not hesitate to contact me at (615) 741-2176.

Sincerely,

A handwritten signature in black ink, appearing to read "Larry C. Knight, Jr.", with a long horizontal line extending to the right.

Larry C. Knight, Jr.

LCK/lvd

cc: Nancy Jones, General Counsel
Tony Greer, Chief Counsel for Insurance
Lauren Dantche, Assistant General Counsel
Brian Hoffmeister, Director of Policy Analysis
Michael Humphreys, Director