

SB 1567 – End of Named Driver Policies?

R. Brent Cooper
Wes Johnson
Cooper & Scully, P.C.
August 21, 2013

The Growing Substandard Market

- For a number of years, the market for substandard auto policies has been a growing one
- The growing use of credit scoring in underwriting preferred policies has driven many to the “substandard” market

The Growing Substandard Market

- Initially, there were insurers who were not in the mainstream who identified this underserved market and were able to reap tremendous benefits
- More recently, many of the main-line insurers have seen the financial rewards that are available in this market and have attempted to enter the market as well.

Non-Standard Policy Forms

- Promulgated/standard policy forms are no longer mandatory
- As a result, insurers serving the substandard market have created forms to identify more precisely the risks and individuals that were being underwritten and to ensure that only those risks and individuals received coverage from the policies

TDI DEFINITION

- **Named driver policy** - An auto insurance policy that covers only the drivers specifically named in the policy. Generally, all other drivers are excluded from coverage under the policy. This type of policy is usually written by surplus lines companies.

BIENNIAL REPORT OF THE TDI- DECEMBER 2010

- Texas continues to attract new entrants to the personal automobile market. Between January 1, 2009 and December 17, 2010, 9 new insurers filed personal automobile insurance products and 22 existing insurers filed new personal auto products. These new products and new entrants mean more choices and increased competition for Texas insurance consumers.

BIENNIAL REPORT OF THE TDI- DECEMBER 2010

- In recent years, a number of companies began writing personal automobile policies that require household residents to be specifically named on the policy in order for coverage to apply (named driver policies). These policies have generated some public policy discussion and legislative review may be warranted.

SPECIAL DATA CALL

- **COMMISSIONER'S BULLETIN #B-0049-11**
- December 16, 2011
- **TO: ALL PROPERTY AND CASUALTY INSURANCE COMPANIES WRITING PRIVATE PASSENGER AUTOMOBILE INSURANCE IN TEXAS**
- **RE: Special Data Call Regarding Named Driver Private Passenger Automobile Policies / Endorsements and Named Driver Exclusions**
- DUE: January 20, 2012

BIENNIAL REPORT OF THE TDI- DECEMBER 2012

- **Legislative Considerations**

- Named-Driver Policies

- Background:

- Policy forms generally must be approved by TDI before an insurance carrier can use them in Texas. TDI currently approves a type of personal automobile policy that provides coverage for only two types of drivers: (1) a person whose name is listed on the policy, and (2) other drivers who are not members of the policyholder's household but have permission to drive the insured vehicle. These policies are known as "named-driver" policies. TDI approved the first named-driver policy in 2004, and the Texas Department of Public Safety (DPS) has indicated that named-driver policies comply with the technical requirements for safety responsibility in Section 601.072 of the Texas Transportation Code.

BIENNIAL REPORT OF THE TDI- DECEMBER 2012

- TDI also approves a comparable type of personal automobile policy known as a “named-driver exclusion” policy. Although somewhat similar to the named-driver policy, the named-driver exclusion policy generally provides coverage to all drivers, except those specifically excluded by name on the policy. In many ways, it is the reverse of a named-driver policy.
- While TDI receives few inquiries on the protections afforded by named-driver exclusion policies, we receive a number of inquiries from consumers and legislators questioning whether named-driver policies truly meet the safety and financial responsibility requirements in the Texas Transportation Code.

BIENNIAL REPORT OF THE TDI- DECEMBER 2012

- Concerns:
- Since a named-driver policy provides coverage only for those drivers specifically named on the policy and nonhousehold permissive drivers, an issue can arise when a member of the policyholder's household, who is not named on the policy, drives the insured vehicle. When this situation occurs, the driver is not covered by the policy, regardless of whether they have permission from the policyholder to drive the automobile. Many policyholders and drivers, however, do not understand these coverage restrictions. Others understand the restrictions but choose to ignore them.

BIENNIAL REPORT OF THE TDI- DECEMBER 2012

- In either scenario, named-driver policies can leave a third-party driver, whose car or body is injured by the noncovered driver, with little recourse against the driver who caused the damage. The injured third party might have to rely on the uninsured motorist coverage provided by his or her automobile policy. Uninsured motorist coverage is usually less substantial than other coverage provided on a person's policy, so the injured person can be left with more out-of-pocket expenses.

BIENNIAL REPORT OF THE TDI- DECEMBER 2012

- While named-driver policies have limitations, they have some benefits as well. Named-driver policies provide insurers with more certainty about the risks they are insuring, which can lead to better rating and underwriting decisions. The ability to make better rating and underwriting decisions can, in turn, allow insurers to offer coverage or charge lower premiums to consumers, making insurance more available.

BIENNIAL REPORT OF THE TDI- DECEMBER 2012

- Suggested Considerations:
- Since TDI currently has the statutory authority to approve named-driver policies and DPS has indicated these policies to meet Transportation Code requirements, the decision about whether to continue to allow named-driver coverages in Texas is a public policy decision. Thus, TDI will continue to approve named-driver policies that meet regulatory and statutory conditions unless given a different directive from the Texas Legislature.

Legislative Response

- The 83rd Texas Legislature saw multiple efforts to either ban such policies outright or restrict their proliferation
- One such effort was Senate Bill 1567 by State Sen. Wendy Davis (D- Fort Worth)

A Compromise Bill?

- S.B. 1567 appears to be a compromise designed not to end named driver policies, but to better inform the public about their restrictive nature
- However, analysis of the bill, now law, proves that practically, it might end the use of named driver policies in their entirety

OTHER LEGISLATION

- HB 1773(THOMPSON, BRAZORIA)-
would have prohibited “named driver
policies”

Senate Bill 1567

- First, and very importantly, the bill places several requirements on not only the insurer, but also the agent involved in the procurement of the policy.

Statutory Definition of Named Driver Policy

- Next, the bill defines “named driver policy” as:
- “an automobile insurance policy that provides coverage only for drivers specifically named on the policy and not for all individuals residing in the named insured’s household...”

Statutory Definition of Named Driver Policy

- ...and that may or may not provide coverage for drivers using a vehicle covered by the policy with permission and not residing in the insured's household. The term includes an automobile insurance policy that has been endorsed to only provide coverage for drivers specifically named on the policy."

PRIOR TDI DEFINITION

- **Named driver policy** - An auto insurance policy that covers only the drivers specifically named in the policy. Generally, all other drivers are excluded from coverage under the policy. This type of policy is usually written by surplus lines companies.

Mandatory Warning/Disclosure

- Under S.B. 1567, before accepting a premium or fee for a “named driver policy,” the agent or insurer must make the following disclosures both orally and in writing to the applicant or the insured...

Mandatory Warning/Disclosure

- "WARNING: A NAMED DRIVER POLICY DOES NOT PROVIDE COVERAGE FOR INDIVIDUALS RESIDING IN THE INSURED'S HOUSEHOLD THAT ARE NOT NAMED ON THE POLICY"

Mandatory Warning/Disclosure

- The bill goes on to provide that before accepting a premium or fee for a named driver policy, the agent or insurer must receive a copy of the disclosure addressed above that has been signed by the applicant or the insured

Change to Insurance Card

- S.B. 1567 further amends the Transportation Code to add the required disclosure for a named driver policy to the contents of a standard proof of motor vehicle liability insurance form prescribed by the Texas Department of Insurance

Applicable on Renewal?

- The bill states that it's provisions apply to an insurance policy that is delivered, issued for delivery, or renewed on or after January 1, 2014
- This implies that the disclosure warnings and signature acknowledging receipt of those warnings must be made at every renewal

Renewal Nightmare?

- If the bill is interpreted by the courts as being applicable on all renewals (which is what the bill states), then this is the most impactful element to carriers
- It would take a herculean effort to get every existing insured to come to their agent and sign the disclosure required to maintain the named driver policy prior to their renewal date – upon every renewal

Other Unanswered Questions

- The bill also requires that the disclosure be made orally and in writing before accepting “any” premium or fee for the policy
- That can possibly be interpreted that if the insured is paying the premium under an installment plan, that a disclosure must be provided each time any payment is made

Other Unanswered Questions

- Bill is silent as to the effect of the failure to make the oral and written disclosures
- Is the remedy administrative?
- Does the failure render the restrictive language in the policy invalid?

Named Driver Exclusions

- It is important to note that SB 1567 does NOT affect the use of named driver exclusions (C.S.H.B. 1810)
- If anything, the anticipated reduced use of named driver policies will likely result in increased reliance on named driver exclusions

END RUNS

- TAKE OUT PERMISSIVE USERS
- DEFINE RESIDENT OR MEMBER OF HOUSEHOLD NARROWLY

Possible Outcomes

- Decreased use of named driver policies due to logistical difficulties in obtaining required disclosures
- Increased use of named driver exclusions
- Increased frequency of material misrepresentation claims by carriers
- Increased pursuit of errors and omissions claims by carriers against their agency force

Questions?

R. Brent Cooper
Wes Johnson
Cooper & Scully, PC
900 Jackson Street, Suite 100
Dallas, Texas 75202
(214) 712-9500
Brent.cooper@cooperscully.com
Wes.johnson@cooperscully.com