



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751
ANTITRUST: 296-5299

July 18, 1979

ATTORNEY GENERAL OPINION NO. 79-149

Mr. John C. Bottenberg
Director, Division of Vehicles
Department of Revenue
State Office Building
Topeka, Kansas 66625

Re: Insurance---Kansas Automobile Injury Reparations Act---Notice of termination by insurance company---K.S.A. 1978 Supp. 40-3118(b) and (c)

Synopsis: Insurers are required to give the director of vehicles notice of termination of motor vehicle liability insurance policy when a policy is cancelled or terminated by the insurer, when renewal is denied, or when an insured requests cancellation of coverage. An insurer is not required to give the director notice of termination when the policy expires on the date specified in the policy or on an endorsement thereto.

Dear Mr. Bottenberg:

You inquire whether insurers are required to provide you with a notice of termination of motor vehicle liability insurance in two situations:

1. When the insurer transfers coverage to a subsidiary company for rate purposes; or
2. When an insured sells, trades, or junks a motor vehicle for which the policy is written.

K.S.A. 1978 Supp. 40-3118(b) provides in pertinent part:

Except as otherwise provided in K.S.A. 40-276, 40-276a and 40-277, . . . and except for termination of insurance resulting from nonpayment of premiums, no motor vehicle liability insurance policy, or any renewal thereof, shall be terminated by cancellation or failure to renew by the insurer . . . unless the insurer shall mail the director notice of termination on or before the date of termination,

K.S.A. 1978 Supp. 40-3118(c) provides in pertinent part:

Except with respect to policies expiring on the date specified therein or specified in an endorsement or certificate made a part thereof, no motor vehicle liability insurance policy, or any renewal thereof, shall be terminated by the insured by either nonpayment of premium or at the request of the named insured, unless the insurer mails the director notice within twenty (20) days after the date of termination,

A cursory review of K.S.A. 40-276, 40-276a, and 40-277 reveals that none provides the insurer relief from the notice of termination requirements imposed by K.S.A. 1978 Supp. 40-3118(b) and (c). K.S.A. 40-276 defines automobile liability insurance, 40-276a sets out the conditions precedent for denial of policy renewal, and 40-277 sets forth the conditions under which a policy may be cancelled by the insurer.

K.S.A. 1978 Supp. 40-3118 is unambiguous and requires notice of termination to be sent to the director whenever the insurer cancels a policy or whenever an insured requests cancellation or does not pay the premium. The only situation in which notice of termination need not be given is when the policy expires on the date specified in it or in an endorsement thereto. We would note, however, that the provisions of the Kansas Automobile Injury Reparations Act does not apply to all motor vehicles and draw your attention to K.S.A. 1978 Supp. 40-3104(d) and 40-3105 relating to exempt vehicles.

Applying K.S.A. 1978 Supp. 40-3118(b) and (c) to your two questions, it is clear the insurers are complying with the statute. In the first situation, an insurer, either at the request of the insured or through K.S.A. 40-277, cancels the insurance policy and the subsidiary company writes a new policy. Two things happen in such a situation. First, the original policy has been cancelled by the insurer. Second, the insured is now covered by a different carrier. It is more than an administrative action inasmuch as a subsidiary company of an insurance company which also writes policies is considered a different insurer. Under rules and regulations of the Commissioner of Insurance, that subsidiary must also have its policy forms approved and it, too, must be licensed to do the business of insurance in the state. (See K.S.A. 40-216 and K.A.R. 40-3-5). Thus, when a company, at the request of an insured or through K.S.A. 40-277, cancels

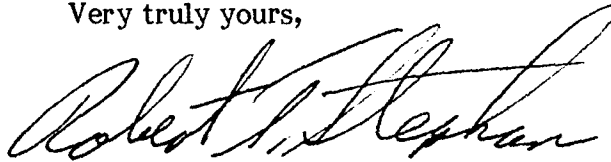
a policy and rewrites another policy on the same company, notice of termination is required to be given simply because the one policy has been cancelled.

The second situation involves the sale, trade, or junking of a vehicle by the insured. Subsection (c) of K.S.A. 1978 Supp. 40-3118 specifically directs that when an insured requests cancellation, the insurer must give notice of termination.

In summary, the insurance companies writing policies of motor vehicle liability insurance under the provisions of the Kansas Automobile Injury Reparations Act must provide notice of termination to the director of vehicles in each instance where a policy is cancelled by the insurer, either at the request of the insured or under the provisions of K.S.A. 40-277 or when renewal of a policy is denied. The single exception to the notice requirement is in those instances in which the policy expires by its own terms.

We regret the delay in sending this opinion to you and hope it satisfactorily answers your questions. If this office may be of further assistance, please do not hesitate to contact us.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Kenneth P. Hackler
Assistant Attorney General

RTS:BEM:KPH:MC