

26 December 2014

DEPARTMENT OF INSURANCE

NOTICE OF PROPOSED RULES

1) Heading of the Part: Misrepresentation and False Warranties

2) Code Citation: 50 Ill. Adm. Code 941

3) Section Numbers: Proposed Action:

941.10 New Section

941.20 New Section

4) Statutory Authority: 215 ILCS 5/154

5) A Complete Description of the Subjects and Issues Involved: Section 154 of the Illinois Insurance Code has a provision that is supposed to protect consumers from having a policy voided, defeated or rescinded by an insurance company (for policies not exempt under this provision) unless the insured made a misrepresentation with actual intent to deceive or a misrepresentation that materially affects either the acceptance of the risk or the hazard assumed by the company.

The Department has seen a voluminous number of complaints regarding rescissions based on an alleged misrepresentation or material change in risk where the Department believes the rescission and basis for such rescission is not valid. Due to the volume of consumer complaints, the concern from our regulators, and the significant harm to the consumers and often third parties (for example if they get into an accident with someone whose insurance rescinds the policy), the Department believes it is necessary to clarify via rule that a misrepresentation with actual intent to deceive or material affects the acceptance of the risk or the hazard assumed by the company cannot exist if (1) the

consumer did not sign and date the application, because there is no proof the consumer had knowledge of what was in the application, and (2) if the information was available via readily available sources at the time the application was being reviewed by the insurance company and the company chose not to review that information at the time of rate and risk assessment.

6) Any published studies or reports, along with the sources of underlying data, that were used when comprising this rulemaking, in accordance with 1 Ill. Adm. Code 100.355:

None

7) Will this rulemaking replace any emergency rule currently in effect? No

8) Does this rulemaking contain an automatic repeal date? No

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9) Does this rulemaking contain incorporations by reference? No

10) Are there any other proposed rulemakings pending on this Part? No

11) Statement of Statewide Policy Objective: This rulemaking will not require a local government to establish, expand or modify its activities in such a way as to necessitate additional expenditures from local revenues.

12) Time, Place and Manner in which interested persons may comment on this proposed rulemaking: Persons who wish to comment on this proposed rulemaking may submit written comments no later than 45 days after the publication of this Notice to:

Barbara Delano or Susan Anders

Assistant General Counsel Rules Coordinator

Illinois Department of Insurance Illinois Department of Insurance

122 S. Michigan Ave, 19th Fl 320 W. Washington St.

Chicago IL 60603 Springfield IL 62767

312/814-0919 217/558-0957

Fax: 312/814-2826

13) Initial Regulatory Flexibility Analysis:

A) Types of small businesses, small municipalities and not-for-profit

corporations affected: None

B) Reporting, bookkeeping or other procedures required for compliance: None

C) Types of professional skills necessary for compliance: None

14) Regulatory Agenda on which this rulemaking was summarized: This rulemaking was not included on either of the 2 most recent agendas because the Department did not anticipate the need for this rulemaking within that timeframe.

The full text of the Proposed Rules begins on the next page:

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TITLE 50: INSURANCE

CHAPTER I: DEPARTMENT OF INSURANCE

SUBCHAPTER I: PROVISIONS APPLICABLE TO ALL COMPANIES

PART 941

MISREPRESENTATION AND FALSE WARRANTIES

Section

941.10 Applicability

941.20 Misrepresentation

AUTHORITY: Implementing Section 154 and authorized by Section 401 of the Illinois Insurance Code [215 ILCS 5/154 and 401].

SOURCE: Adopted at 39 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

#### Section 941.10 Applicability

No misrepresentation or false warranty made by the insured or in the insured's behalf in the negotiation for a policy of insurance, or breach of a condition of the policy, shall defeat or avoid the policy or prevent its attaching unless the misrepresentation, false warranty or condition was stated in the policy or endorsement, or in a rider to or in the written application for the policy. No such misrepresentation or false warranty shall defeat or avoid the policy unless it was made with actual intent to deceive or materially affects either the acceptance of the risk or the hazard assumed by the company. With respect to a policy of insurance as defined in Section 143.13(a), (b) or (c) of the Insurance Code, except life, accident and health, fidelity and surety, and ocean marine policies, a policy or policy renewal shall not be rescinded after the policy has been in effect for one year or one policy term, whichever is less. This Section shall not apply to policies of marine or transportation insurance.

#### Section 941.20 Misrepresentation

a) Actual intent to deceive or materially affect either the acceptance of the risk or the hazard assumed by the company shall not be deemed to exist and shall not allow a company to defeat, avoid or rescind a policy, if the application for the policy was not signed and dated by the insured.

b) Actual intent to deceive or materially affect either the acceptance of the risk or the hazard assumed by the company shall not be deemed to exist and shall not allow a

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company to defeat, avoid or rescind a policy if the information that was misrepresented or falsely warranted was available and could have been known to the insurance company through verification by the insurance company from readily available sources at the time the policy was issued. Readily available sources include the motor vehicle record maintained by the Illinois Secretary of State and the LexisNexis Comprehensive Loss Underwriting Exchange (C.L.U.E.) Reports.