

No. 2018- 5692

**OFFICIAL ORDER
of the
TEXAS COMMISSIONER OF INSURANCE**

Date: OCT 3 1 2018

Subject Considered:

FIRST ACCEPTANCE INSURANCE COMPANY, INC.
P.O. Box 150769
Nashville, Tennessee 37215-0769

CONSENT ORDER
TDI ENFORCEMENT FILE NO. 11753

General remarks and official action taken:

The subject of this order is whether disciplinary action should be taken against First Acceptance Insurance Company, Inc. (First Acceptance).

WAIVER

First Acceptance acknowledges that the Texas Insurance Code and other applicable law provide certain rights. First Acceptance waives all of these rights, and any other applicable procedural rights, in consideration of the entry of this consent order.

FINDINGS OF FACT

1. First Acceptance is a fire and casualty insurance company holding a certificate of authority to transact business in the state of Texas.

Laws Applicable to Named Driver Policies

2. Section 1952.0545 of the Insurance Code [S.B. 1567 (83rd Leg. R.S., Davis), eff. Sept. 1, 2013], requires insurers and agents to make written and oral disclosures to the applicant or insured, and obtain contemporaneous written confirmation of the oral disclosure, of the nature and limitations of named driver automobile insurance policies. Disclosures must be made before accepting any premium or fee for the named driver policy. S.B. 1567 applies only to named driver policies delivered, issued for delivery, or renewed on or after January 1, 2014.
3. On May 18, 2014, the department adopted amendments to 28 TEX. ADMIN. CODE § 5.204, to partially implement provisions of S.B. 1567 requiring liability insurers that write named

driver policies to include the named driver disclosure in the standard proof of motor vehicle liability insurance form, i.e., the "Texas Liability Insurance Card."

4. On January 28, 2015, the department adopted 28 TEX. ADMIN. CODE § 5.208 to implement the remaining disclosure requirements in S.B. 1567 for both new and renewal named driver policies, and to clarify the definition of a named driver policy.

Named Driver Underwriting Practices

5. On and after January 28, 2015, First Acceptance wrote named driver policies in one, two, three, and six month term lengths, through an affiliated agency.
6. First Acceptance wrote these named driver policies using its personal automobile policy form approved on December 2, 2014, in department filing link number S9257. The policy form contains the named driver disclosure.
7. In April 2016, First Acceptance ceased writing new named driver policies.
8. First Acceptance accepts payment of premium and fees for renewals of named driver policies in person, online, by telephone, and by mail (via check or money order).
9. First Acceptance mails a renewal offer to the insured containing an invoice and a written named driver disclosure form. The disclosure form instructs the insured to call a toll-free telephone number to hear the oral disclosure and requests that the insured sign and return the disclosure form.
10. The toll-free telephone number provided in the disclosure form was disconnected and did not provide the oral disclosure beginning sometime in February 2017. First Acceptance represents that the disconnection occurred without its knowledge, following a merger of its telephone service provider with another service provider.
11. The invoice instructs the insured how to make payment online, by phone, or by mail, and states that if the insured pays the amount due, coverage continues.
12. The renewal offer does not include a declarations page or Texas Liability Insurance Card for the renewal term. The declarations page and Texas Liability Insurance Card are delivered to the insured after acceptance of the renewal payment.
13. If an insured makes the renewal payment in person, the agent for First Acceptance reads the oral disclosure and the insured signs the disclosure form.
14. If an insured makes the renewal payment online, the oral disclosure is provided as an audio file and the insured cannot complete payment until the insured has electronically signed the disclosure form.

15. If an insured calls to make the renewal payment, First Acceptance's systems prompt the customer service agent to read the oral disclosure to the insured. The agent then sends the disclosure form to the insured by email or fax requesting the insured's signature.
16. If an insured makes the renewal payment by mail, First Acceptance accepts premium and fees at the named driver policy rate.
17. When First Acceptance does not have the documentation to demonstrate it made the oral disclosure to the insured, received a signed copy of the written disclosure, and confirmed contemporaneously in writing the provision of the oral disclosure, it handles and processes claims on the named driver policy as if it is not a named driver policy, i.e., as if it provides coverage to all household residents not named on the policy.
18. However, at renewal, First Acceptance does not also deliver or issue for delivery to the insured a new non-named driver policy or a new Texas Liability Insurance Card not showing the named driver disclosure warning. In other words, it does not also inform the named insured that if the insured fails to sign the written disclosure and confirm provision of the oral disclosure, the terms of the insured's contract are unilaterally changed to include expanded coverage for all household residents not named on the policy.
19. First Acceptance, unilaterally, of its own volition, and without a request from the insured, treats named driver policies as non-named driver policies (i.e., ones with expanded coverage for household residents not named on the policy), and accepts premium and fees for named driver policies without receiving signatures to confirm provision of the written and oral disclosures.
20. As of April 1, 2018, First Acceptance had 406 named driver policies in force.
21. On July 3, 2018, under department filing link S643709, the department approved First Acceptance's filing of: a personal automobile policy form (PAP); a "Restricted Coverage" endorsement containing the named driver disclosure; and, other endorsement forms. When this approved PAP is endorsed by the "Restrictive Coverage" endorsement, it is a named driver policy within the meaning of TEX. INS. CODE § 1952.0545.
22. In department filing link S643709, First Acceptance represented to the department that the approved PAP will be available for purchase for terms of 6 or 12 months without a "Restrictive Coverage" endorsement, but if a customer wants a named driver policy, it will only be offered for a term of 12 months.
23. On July 18, 2018, First Acceptance's toll-free telephone line was restored and now properly functions to play an audio recording of the oral disclosure for incoming callers.
24. In an effort to achieve compliance, First Acceptance proposes and voluntarily agrees that on and after November 1, 2018 it will only write new named driver policies in 12-month terms, and to the extent it has not already done so, it will only make renewal offers in 12-

month terms upon any 12-month anniversary of the original effective date of any named driver policy.

25. First Acceptance expressly consents to the terms of this order on the condition that it reserves the right to change its business model for named driver policies in the event that the Texas Legislature enacts any changes to TEX. INS. CODE § 1952.0545, and/or if the department adopts any changes to its rules related to named driver policies. Should First Acceptance exercise this right, it also expressly agrees and understands that any such revisions to its named driver business model must conform and comply with all applicable Texas insurance laws.

CONCLUSIONS OF LAW

1. The commissioner has jurisdiction over this matter pursuant to TEX. INS. CODE §§ 82.051 – 82.055, 84.021– 84.044, and 801.051-801.053.
2. The commissioner has the authority to informally dispose of this matter as set forth in TEX. GOV'T CODE § 2001.056; TEX. INS. CODE §§ 36.104 and 82.055; and 28 TEX. ADMIN. CODE § 1.47.
3. First Acceptance has knowingly and voluntarily waived all procedural rights to which it may have been entitled regarding the entry of this order, including, but not limited to, issuance and service of notice of intention to institute disciplinary action, notice of hearing, a public hearing, a proposal for decision, rehearing by the commissioner, and judicial review.
4. First Acceptance violated TEX. INS. CODE § 1952.0545 and 28 TEX. ADMIN. CODE § 5.208 by accepting a premium or fee for named driver policies without making the oral disclosure, without receiving a signed copy of the written disclosure, and failing to confirm contemporaneously in writing the provision of the oral disclosure.
5. First Acceptance violated TEX. INS. CODE § 525.002(a)(1)(A) and 28 TEX. ADMIN. CODE § 5.204(b)-(c) on and after September 1, 2015, by unilaterally expanding the insured's coverage without the insured's request or consent, yet failing to timely deliver or issue for delivery a non-named driver policy and a Texas Liability Insurance Card not showing the named driver disclosure to insureds whose named driver policies reached any 12 month anniversary of the original effective date of those policies.
6. First Acceptance violated TEX. INS. CODE §§ 541.003, 541.051(1)(A), and 541.061(1) – (3), by misrepresenting the contractual terms of named driver policies at renewal.
7. First Acceptance violated TEX. INS. CODE §§ 541.003 and 541.061(5) by failing to disclose a matter required by law to be disclosed, including failing to make the requisite disclosures required by TEX. INS. CODE § 1952.0545 and 28 TEX. ADMIN. CODE § 5.208.

It is ordered that First Acceptance Insurance Company, Inc. comply with the following:

- a. First Acceptance must comply with its voluntary agreement described in Finding of Fact No. 24.
- b. Not later than December 1, 2019, First Acceptance must provide the department with:
 - i. the date when its last named driver policy having a term of less than 12 months non-renews or expires; and,
 - ii. the number of named driver policies in force on November 1, 2019, including a count of those with 12-month terms, and a count of those with term lengths other than 12 months, if any.
- c. On and after November 1, 2019, First Acceptance must cease and desist at renewal the practice of unilaterally and of its own volition, treating named driver policies as non-named driver policies with expanded coverage for household residents not named on the policy.
- d. On and after November 1, 2019, First Acceptance must operate in full compliance with all insurance laws applicable to new and renewal named driver policies, including but not limited to TEX. INS. CODE §§ 525.002, 551.105, 551.106(b), 1952.0545, and 28 TEX. ADMIN. CODE §§ 5.204, 5.208, 5.7005(c) and 5.7007(a).
- e. All information agreed and required to be submitted to the department under the terms of this order must be sent electronically to both: rachel.cloyd@tdi.texas.gov and catherine.bell@tdi.texas.gov, or their successors.

It is further ordered that First Acceptance must pay an administrative penalty of \$50,000 within 30 days from the date of this order. The administrative penalty must be paid by cashier's check or money order made payable to the "State of Texas" and transmitted to the Texas Department of Insurance, Attn: Enforcement Section, Division 60851, MC 9999, P.O. Box 149104, Austin, Texas 78714-9104.

It is further ordered that if it is found after a public hearing that First Acceptance has failed to comply with any of the terms of this Order, First Acceptance may be subject to further action by the commissioner under the provisions of TEX. INS. CODE § 82.054.



Kent C. Sullivan
Commissioner of Insurance

2018- 5692

COMMISSIONER'S ORDER

First Acceptance Insurance Company, Inc.

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APPROVED AS TO FORM AND CONTENT:

A handwritten signature in black ink, appearing to read "Rachel A. Cloyd", is written over a horizontal line.

Rachel A. Cloyd

Director, Enforcement Section

Texas Department of Insurance

