

No. **2020-6505**

**Official Order
of the
Texas Commissioner of Insurance**

Date: 10/13/2020

Subject Considered:

Esurance Insurance Company
650 Davis Street
San Francisco, California 94111

Consent Order
TDI Enforcement File No. 21467

General remarks and official action taken:

The subject of this order is whether disciplinary action should be taken against Esurance Insurance Company (Esurance). Esurance improperly used an applicant's lack of prior insurance to determine personal automobile rates and self-reported a rating error related to a premium discount. Esurance has agreed to pay restitution to the affected policyholders and a \$200,000 administrative penalty.

Waiver

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

Findings of Fact

1. Esurance is a foreign casualty insurance company that holds a certificate of authority to transact business in Texas.

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Rating Error – Lack of Prior Insurance

2. Pursuant to subsection (b) of 28 TEX. ADMIN. CODE § 5.401, insurers may not use an applicant's lack of prior insurance in determining the appropriate rate for private passenger automobile liability insurance where such applicant has not been operating an uninsured motor vehicle in the state for more than 30 days during the 12 months immediately preceding the date of the application.
3. Since at least 2015, Esurance's personal automobile rate filings had Pre-Credit Tier placement factors that considered a policyholder's prior insurance, including any lapse in insurance. Assignment in the Pre-Credit Tier affected the final premium a policyholder paid.
4. Additionally, Esurance's Insurance History Score utilized two variables (Prior Insurance Lapse and Prior Insurance Length) that caused a rate consequence for lack of prior insurance of not more than 30 days.
5. After objection from department staff in the fall of 2019, Esurance made a new rate filing that removed consideration of a policyholder's lack of prior insurance in Pre-Credit Tier placement factors the Insurance History Score. Esurance is implementing new programming to distinguish applicants whose lapse is associated with no unlawful vehicle operation. That programming will be completed by February 28, 2021.
6. Esurance estimates that the rating error has affected approximately 12,500 policyholders with a premium impact of approximately \$1.9 million.

Implementation Error – Online Shopper Discount

7. In May 2020, Esurance self-reported to TDI that it failed to implement a rule change made in its August 2018 rate filing due to a system error. Specifically, Esurance failed to apply the online shopper discount to qualifying policyholders on a continuing basis after the first term. The system error caused the discount to cease following the first policy term.
8. The error occurred from August 15, 2018, through May 2019, when Esurance discovered and corrected the error.

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9. Esurance identified 8,238 impacted policies and has already paid restitution to the affected policyholders, with interest in the amount of 5 percent per annum.

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 801.052–801.053.
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. Esurance 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. Esurance violated 28 TEX. ADMIN. CODE § 5.401 by assigning a rate consequence to an applicant's lack of prior insurance of not more than 30 days.
5. Pursuant to TEX. INS. CODE § 82.053, the commissioner is authorized to direct Esurance to make complete restitution to each policyholder impacted by the violations.

Order

Esurance is ordered to comply with the following:

- a. Esurance must identify all personal automobile insurance policies issued in Texas with effective dates from January 1, 2015, through February 28, 2021 (the "Review Period").
- b. For each policy in the Review Period, Esurance must use all available information to identify any policy that was illegally surcharged as discussed above. The illegal surcharge is the Overcharge.
- c. Esurance must pay restitution in the form of a company check or account credit to each policyholder identified in the Review Period as having an

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Overcharge (the "Qualifying Policyholders"). The restitution check and/or account credit must include both the dollar amount of the overcharge, plus simple interest due on the overcharge. The rate of interest is 5 percent per annum.

- d. Esurance must mail the restitution checks and/or issue the account credits to the Qualifying Policyholders on or before April 15, 2021.
- e. Any restitution checks that are returned to Esurance with an address correction must be promptly resent to the correct address. Funds from any restitution checks that are returned thereafter for incorrect addresses and from checks that are not negotiated must be reported and delivered to the comptroller pursuant to the procedures and deadlines set forth in TEX. PROP. CODE §§ 72.001 *et. seq.*, 73.001 *et. seq.*, and 74.001 *et. seq.* Esurance must copy the department on any correspondence pertaining to presumed abandoned funds that is sent to the comptroller.
- f. On or before July 15, 2021, Esurance must report the restitution paid to the Qualifying Policyholders by submitting a complete and sortable electronic spreadsheet to the department. The spreadsheet must contain the following information:
 - i. policy number;
 - ii. policyholder name;
 - iii. policyholder address;
 - iv. effective date of the policy;
 - v. expiration date of the policy;
 - vi. amount of Overcharge;
 - vii. dollar amount of simple interest;
 - viii. amount of Overcharge and interest;
 - ix. date(s) of mailing of restitution check or credits;
 - x. the total sum of all Overcharges;
 - xi. the total sum of all simple interest; and,
 - xii. the total sum of all restitution paid (total Overcharges plus the total of the simple interest).
- g. Esurance must send all submissions required under the terms of this order by email to: EnforcementReports@tdi.texas.gov.

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Recommended and reviewed by:



Leah Gillum, Deputy Commissioner
Enforcement Division



Mandy R. Meesey, Associate Commissioner
Enforcement Division

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Affidavit

STATE OF California §
§

COUNTY OF Marin §

"My name is Jonathan Adkisson. I am of sound mind, capable of making this statement, and have personal knowledge of these facts which are true and correct.

I hold the office of President, and am the authorized representative of Esurance Insurance Company. I am duly authorized by said organization to execute this statement.

Esurance Insurance Company has knowingly and voluntarily entered into the foregoing consent order and agree with and consent to the issuance and service of the same by the commissioner of insurance of the state of Texas."

DocuSigned by:

Jonathan Adkisson

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10/6/2020 | 3:14:48 PM PDT

Affiant

Date