

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)

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| <u>Section Numbers:</u> | <u>Proposed Actions:</u> |
| 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Illinois Insurance Code has a provision that was enacted to protect consumers from having a policy voided, defeated or rescinded by an insurance company (for policies not exempt under this provision) unless the insured made a misrepresentation with actual intent to deceive or a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.

When a policy of insurance is issued, the insurance company is supposed to underwrite the risk in order to properly assess and rate the coverage. The Department has seen a 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 concern from our regulators, and the harm to consumers, who are often third parties (for example, an individual who gets into an accident with someone whose insurance company rescinds their policy), the Department believes it is necessary to clarify via rule that if a company opts not to obtain the readily available information for named insureds and drivers provided by the applicant at the time of application to underwrite the risk prior to issuing the policy, the company shall not defeat, avoid or rescind the policy of insurance based on obtaining the readily available information after a loss has occurred or a claim is filed.

- 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
- 9) Does this rulemaking contain incorporations by reference? No

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- 10) Are there any other 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:
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| Barbara Delano Assistant General Counsel Illinois Department of Insurance 122 S. Michigan Ave, 19th Fl Chicago IL 60603 312/814-0919 fax: 312/814-2826 | or | Susan Anders Rules Coordinator Illinois Department of Insurance 320 W. Washington St. Springfield IL 62767 217/558-0957 |
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- 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: July 2016

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 40 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 such misrepresentation, false warranty or condition shall have been 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

If the company opts not to obtain readily available information for named insureds and drivers provided by the applicant at the time of application to underwrite the risk prior to issuing the policy, the company shall not defeat, avoid or rescind the policy of insurance based on obtaining the readily available information after a loss has occurred or a claim is filed. Readily available information is defined to be limited to the information that appears on the motor vehicle record (MVR) maintained by the Illinois Secretary of State and LexisNexis Comprehensive Loss Underwriting Exchange (C.L.U.E.) Auto Reports, or the corresponding subsequent equivalent.