

The Massachusetts Agent

Official Newsletter of the Massachusetts Association of Insurance Agents

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DOI News:

DOI Reviews New Animal Control Law ...

In the November 29, 2012 edition of The Massachusetts Agent, MAIA V.P. of Government Affairs and General Counsel Dan Foley wrote about the new Animal Control Law, Chapter 193 of the Acts of 2012 - "An Act Further Regulating Animal Control."

At that time, we were unsure if the new statute would prohibit insurers from refusing to insure a home based upon the breed of the homeowner's pet dog. We are pleased that Deputy Commissioner and General Counsel Robert A. Whitney has offered the following opinion on the matter:

MASSACHUSETTS DIVISION OF INSURANCE

Review of the New Animal Control Law, Chapter 193 of the Acts of 2012, Entitled "An Act Further Regulating Animal Control"

With respect to the new animal control law, Chapter 193 of the Acts of 2012, entitled "An Act Further Regulating Animal Control," that went into effect on Oct. 31, 2012, one of the new law's provisions states, in part, that: "no dog shall be deemed dangerous: . . . (ii) based upon the breed of the dog; . . ." The Division of Insurance ("Division") has been asked whether this provision of the new law would act to void the exclusionary endorsements that some insurance companies have adopted that deny homeowner's insurance coverage because someone owns a certain type or breed of dog. As set forth below, it is the Division's position that the new law does not act to preclude carriers from including such exclusionary endorsements in their policies.

The new law speaks in a large part to the licensing of owners of dogs, and with respect to the breeding, sale and regulation of dogs. It includes a number of important changes to strengthen animal protection measures, regulate dangerous and nuisance dogs, and create some statewide oversight for animal control. Among other changes, the law now requires training for animal control officers and it establishes a statewide Homeless Animal Prevention and Care Fund to pay to spay and neuter animals in shelters and municipal animal control facilities.

In regard to dog complaints, the new law includes specific definitions for dangerous and nuisance dogs, and a statewide framework for regulating them that overrides local regulations. The new legislation states that hearing authorities in cities and towns may not deem a dog to be "dangerous" solely based on its growling and/or barking, its breed, or its reaction to another animal or person in certain circumstances, and must instead conduct an investigation to determine whether a dog is, in fact, "dangerous." Those include situations in which a dog is protecting or

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defending itself, its offspring or another domestic animal or a person from attack or assault; is being teased, tormented or battered; or attacks or threatens a person committing a crime upon the person or property of its owner or keeper. See M.G.L. c. 140, s. 157(a).

As noted above, the new law prohibits cities and towns from regulating dogs in a manner that is specific to the particular breed of dog. More specifically, SECTION 32 of Chapter 193 of the Acts of 2012 amends Massachusetts General Laws Chapter („Chapter“) 140 by striking Section 157 of that chapter and replacing it with a new Section 157. The new Section 157 of Chapter 140 provides that „[a]ny person may file a complaint in writing to the hearing authority that a dog owned or kept in the city or town is a nuisance dog or a dangerous dog; provided, however, that no dog shall be deemed dangerous: . . . (ii) based upon the breed of the dog; . . .“ M.G.L. c. 140, s. 157(a).

The new law defines a “dangerous dog” based on the actions of the particular dog at issue, and not based upon its breed. In this regard, the new law amended Chapter 140 of the General Laws by striking out the „Definitions“ set forth in Section 136A, and replacing it with a new Section 136A, that contained the following definition: “Dangerous dog”, a dog that either: (i) without justification, attacks a person or domestic animal causing physical injury or death; or (ii) behaves in a manner that a reasonable person would believe poses an unjustified imminent threat of physical injury or death to a person or to a domestic or owned animal.”

Under the new Section 157 of Chapter 140, any person may file a complaint in writing to a city or town’s hearing authority, complaining that a dog is a dangerous dog. See M.G.L. c. 140, s. 157(a). If the hearing authority finds after investigation that a dog is a „dangerous dog,” then the statute enumerates what the hearing authority might do. See M.G.L. c. 140, s. 157(c). One of the options is to require the dog owner to provide proof of an insurance policy of an amount not less than \$100,000 insuring the owners or keeper against a claim based on damage or injury caused by the dog or evidence of reasonable efforts made to obtain such an insurance policy. See M.G.L. c. 140, s. 157(c)(iv).

The new law is very different from a bill that was filed in 2009 but which did not become law, House Bill 913, entitled „An Act Concerning Use of Certain Insurance Underwriting Guidelines Pertaining to Dogs Harbored on Insured Property.” House Bill 913 provided that „[n]o insurance company offering homeowners insurance coverage in Massachusetts issuing a policy or contract insuring against liability for injury to any person or injury to or destruction of property arising out of ownership or lease of residential property shall refuse to issue or renew, cancel or charge or impose an increased premium or rate of such a policy or contract based in whole or in part, upon the harboring of any specific breed or breeds of dog upon such real property.” 2009 House Bill 913, Section 2. Further, the bill provided that „[i]f any such dog has been designated as a dangerous dog pursuant to current statutes, the provisions in this section shall in no manner prohibit an insurer from refusing to issue or renew or from canceling any such contract or policy, nor from imposing an increased premium or rate for such a policy or contract.” 2009 House Bill 913, Section 3.

Unlike House Bill 913, the language of the new law discussed above does not appear in any way to preclude insurance companies from refusing to issue insurance policies to cover property where certain breeds of dogs are present. Also, it does not require insurance companies to insure dogs that they may otherwise believe to be dangerous solely on account of their breed. In addition, the new law does not mention the relationship between a breed of dog and the ability, or not, to procure property insurance within the Commonwealth.

As noted above, the new Chapter 193 of the Acts of 2012, does discuss insurance requirements in one context: if a hearing authority deems a dog to be “dangerous,” the hearing authority may issue an order requiring that “that the owner or keeper of the dog provide proof of insurance in an amount not less than \$100,000 insuring the owner or keeper against any claim, loss, damage or injury to persons, domestic animals or property resulting from the acts, whether intentional or unintentional, of the dog or proof that reasonable efforts were made to obtain such insurance if a policy has not been issued; . . .” See M.G.L. c. 140, s. 157(c)(iv).

Thus, while the legislature did discuss insurance requirements in this context in the new animal control law, it chose not to preclude carriers from refusing to issue coverage based upon the harboring of any specific breed or breeds of dog upon the insured property. Therefore, it is the Division’s position that the new animal control law, Chapter 193 of the Acts of 2012, does not preclude carriers from choosing to deny insurance coverage to persons owning or keeping particular breed of dogs on the insured premises.

For further information, please contact Robert A. Whitney, Deputy Commissioner and General Counsel, Massachusetts Division of Insurance.

Dated: January 28, 2013

CAR News:

Commercial Auto Residual Market Rates ...

CAR has announced that the Division of Insurance has placed on file the Massachusetts commercial automobile residual market rates for policies effective April 1, 2013 and later. The new CAR Commercial Auto Manual is now available on CAR's [website](#).

RMV News:

New RMV Website Goes Live ...

On Saturday, February 2, 2013, the RMV website was re-launched with a new design and a new address. The new address is: www.massrmv.com. The new site has been redesigned and will be easier for customers to navigate. All the information, forms, and online transactions that are currently available on our website will continue to be available on the new website. All RMV forms and documents have been revised. Anyone who accesses the old address (www.mass.gov/rmv) after February 2nd, either by typing it or using a bookmark, will be redirected to www.massrmv.com. Here's a sample screen shot of the new **RMV home page**:

The screenshot shows the homepage of the Massachusetts Registry of Motor Vehicles. At the top, a dark banner reads "Become an organ & tissue donor today". Below this is the site's header with the logo and a search bar. A navigation menu includes links for Home, Online Services, Forms & Manuals, License & ID, Registration, Suspensions & Hearings, Title & Salvage, and Branch Info. A red alert banner states "This is test special alert ...More". The main content area features a large image of a motorcycle rider with the text "Motorcycle Rider Education Program". To the right, a "Top Online Services" box lists: Registration Renewal, Registration Inquiry, Drivers License Renewal, and Pay Citation Online. Below this is an "Alerts" section with a message about the Plymouth RMV being closed. Further down, there are sections for "New to Mass", "Driving in Mass", and "Vehicle Ownership", each with sub-links and "More" buttons. A "Locate your nearest branch" section includes a zip code input field. At the bottom, there are social media icons, a "massDOT" logo, and a "Renew Your Mass ID Online" banner.

Internal informational banners will be located at the top and bottom of the page.

This is the primary navigation toolbar with links to the main sections of the website.

Section with information and online transactions for customers who are new to Massachusetts.

Section with information and online transactions related to licenses and permits.

Section with information and online transactions related to registrations and titles.

The most frequently used online transactions are listed here.

RMV service alerts are listed here.

Locate a branch using this feature.

Link to the Merit Rating Board.

RMV Plans to Accept Web Advertising ...

State officials hope to generate \$65,000 in new revenue during the first year of allowing advertisements on the Registry of Motor Vehicles' new website. The Massachusetts Department of Transportation is finalizing a contract with Municipal Media Solutions, an advertising vendor, and Registry officials announced Monday that Massachusetts is poised to become the first state to accept advertising on its motor vehicle administration site. According to the RMV, ads will appear on informational pages and not on customer transaction pages. Registry customers in 2012 performed more than 3.4 million transactions online, up from 2.9 million in 2009.

RMV's License Renewal Reminder Service No Longer Available ...

We learned, quite by accident when we visited the RMV's new website, that the Registry's free License Renewal Reminder Service is no longer available. We are checking with the RMV to determine what impact, if any, this will have on those who have already signed up for the service.

projectcap News:

Digital Marketing Month: Make This the Month You Make It Happen ...

It's no secret that the Internet has fundamentally changed the way many of our consumers research and buy insurance – and that includes how they choose an agent. As this trend continues to grow, those agencies that truly embrace digital marketing as a means to maintaining their competitive advantage are the agencies that will also continue to grow.

Given the significant opportunity that lies before us, MAIA, Trusted Choice® and Project CAP have designated February 2013 as Digital Marketing Month and are introducing two new agency marketing programs that have already delivered proven results and new revenue for early adopters.

For more information – including educational videos and peer reviews – please consult the attached overview or visit <http://DMM.projectcapmarketing.com>. You can also contact the Project CAP agency service team directly and toll-free at 855.372.0070.

In the days to come, you're likely to see additional articles about Digital Marketing Month and the special opportunities being created in our state and national media. But please don't wait. Program availability is limited and many of the incentives we've arranged will end February 28.

Make this the day you make the decision to grow your agency. Make this the month you start to make it happen.

To give you a "leg-up," here are links to the projectcap blog on Digital Marketing ... Parts 1 through 3.

- [Demystifying the Digital World, Part 1: Content Marketing](#)
- [Demystifying the Digital World, Part 2: Search Enging Marketing](#)
- [Demystifying the Digital World, Part 3: Social Media Marketing](#)

E&O Loss Control:

After the Storm: Insurance Agents E&O Lessons Learned ...

Sally Combs, Technical Director of Professional Liability Claims at Fireman's Fund Insurance Company, has authored an article regarding the second wave of claims against insurance agents by their clients following a natural disaster.

According to Combs' article, "The fact that a claim is made does not necessarily mean that there is liability on the part of the agent, as there are often viable defenses to such claims. Following certain 'best practices' can help to eliminate some of the problems that lead to claims in the first place, enhance the prospect of a successful defense, and reduce the impact of the claims that are made."

We've posted the complete article on massagent.com®. Click [here](#) to to read, print of download it.

MAIA would like to acknowledge our 2012 Agent Awareness Campaign Diamond and Platinum company partners. Please support those companies that support the Independent Insurance Agent.

Massachusetts Association
of Insurance Agents
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