

# The State of New Hampshire Insurance Department

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## Bulletin Docket No.: 20-061-AB

**To:** All Insurance Companies Authorized to Write Private Passenger Automobile Insurance in New Hampshire

**From:** Commissioner Christopher R. Nicolopoulos, Esq. CRN

**Date:** July 27, 2020

**Re:** NH's Take-All-Comers Rule for Personal Lines Automobile Insurance

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The New Hampshire Insurance Department has received inquiries regarding the ability of insurers to reject risks in the personal lines automobile market in accordance with traditional underwriting standards.

### I. The "Take-All-Comers" Rule

The "Service" provision of New Hampshire's automobile insurance rule, Ins 1400, provides that "[a]ll insurers authorized to write automobile insurance in this state shall issue to any eligible risk a policy of automobile insurance covering private passenger automobiles." Ins 1401.03(a). Ins 1400 defines "eligible risk" to mean "a person who has signed a residency statement pursuant to RSA 417-A:3-b and Ins 1406.01." Ins 1402.02(c). The following types of motor vehicles are considered private passenger automobiles for purposes of Ins 1400: (1) automobiles; (2) pick-up trucks, panel trucks, delivery sedans, and other similar vehicles (not customarily used for commercial purposes other than farming); (3) motorcycles, motorbikes, motorscooters, and other similar 2-wheel and 3-wheel vehicles; (4) off highway recreational vehicles subject to registration under RSA 215-A; and (5) motorhomes as defined in the rule. Ins 1402.02(h). These regulations read together constitute what is referred to as the personal-lines "take-all-comers" rule. The take-all-comers rule does not apply to commercial lines insurance.

## **II. Application of the Take-All-Comers Rule**

### **A. Offering All Limits and Deductibles to All Applicants**

In order to comply with the take-all-comers rule, insurance companies writing private passenger automobile insurance in New Hampshire must offer the same coverages and coverage limits to all applicants. For example, if an insurer offers multiple limits, the insurer must rate for and offer all limits to all applicants. Similarly, if the insurer offers multiple deductibles levels, the insurer must offer all deductible levels to all applicants.

### **B. Exclusions**

Insurers may offer optional exclusions in personal lines automobile insurance products which reduce coverage to mandatory minimums under RSA 259:61 and also the rate taken by the insurer. However, insurers cannot require an insured to accept an optional endorsement as a precondition of offering the coverage as that would violate the take-all-comers rule. Insurers may also include mandatory exclusions in personal lines automobile insurance products that apply to all insureds which result in reducing coverages down to mandatory minimums required by RSA 259:61. All personal automobile insurance forms and provisions must also comply with RSA 412:5, I, Ins 1400, and the financial responsibilities law set forth in RSA 259 and RSA 264.

### **C. Driving Record & License**

The definition of “eligible risk” only requires that the applicant sign the residency form to become eligible for a personal lines automobile insurance policy. Ins 1402.02(c). Thus, characteristics such as the quality of the applicant’s driving record or possession of a valid driver’s license are not a basis to reject an application. Rather, the take-all-comers rule only allows such characteristics to be considered for rating purposes.

### **D. Type of Vehicle Sought to Be Insured**

The take-all-comers rule applies to all vehicles that fall within the list of covered vehicles under Ins 1400 as detailed above. Consequently, an insurer cannot refuse to write an automobile because it is, for example, an exotic, classic, or high-value vehicle. If it falls within the list covered by the rule, the company must rate and

offer a policy. An insurer does not need to take-all-comers for vehicles that do not fall within the list.

### **III. Ways for Insurers to Comply**

The automobile insurance rule provides insurers with multiple ways to comply with the take-all-comers rule. The most common way to comply is to rate the risk and offer to issue a policy. However, the “Movement/Placement of a Policy in the Voluntary Market” provision of the automobile insurance rule permits insurers to affiliate with another insurer for purposes of placing the risk with the other insurer in order to comply with the take-all-comers rule. Ins 1402.04. The Department requires all such affiliation agreements to be submitted through the SERFF system for review and approval. The “Cessions” provision of the automobile insurance rule also permits insurers to cede certain risks (drivers with at least one Safe Driver Incentive Plan point) to the New Hampshire Automobile Reinsurance Facility, which is an RSA 404-C mandatory risk sharing plan. Ins 1405.10(e).

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