TITLE 114
LEGISLATIVE RULE
INSURANCE COMMISSIONER

SERIES 61
CREDIT PERSONAL PROPERTY INSURANCE

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TITLE 114
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SERIES 61
CREDIT PERSONAL PROPERTY INSURANCE

§114-61-1. General.

1.1. Scope. --

~~a. The purposes of this rule are to:~~

~~1. Promote the public welfare by regulating credit personal property insurance;~~

~~2. Create a legal framework within which credit personal property insurance may be written in this state;~~

~~3. Help maintain the separation between creditors and insurers;~~

~~4. Minimize the possibilities of unfair competitive practices in the sale of credit personal property insurance; and~~

~~5. Address problems that could arise from reverse competition in credit insurance markets.~~

~~b. This rule applies to:~~

~~1. An insurer or producer transacting credit personal propertyinsurance as defined in this rule; and~~

~~2. All credit personal property insurance written in connection with credit transactions for personal, family or household purposes, except:~~

~~A. Transactions involving extensions of credit primarily for business or commercial purposes;~~

~~B. Insurance on motor vehicles designed for highway use and mobile homes;~~

~~C. Insurance written in connection with a credit transaction that is secured by a real estate mortgage or deed of trust;~~

~~D. Creditor-placed insurance;~~

~~E. Title insurance;~~

~~F. Non-filing insurance;~~

~~G. Insurance purchased by a creditor after repossession or a similar event where the creditor gains possession of the property; and~~

~~H. Insurance for which no identifiable charge is made to or collected from the debtor.~~

1.1.a. The purposes of this rule are to promote the public welfare by regulating personal property insurance; create a legal framework within which credit personal property insurance may be written in this state; and help maintain the separation between creditors and insurers. It will also minimize the possibilities of unfair competitive practices in the sale of credit personal property insurance, and address problems that could arise from reverse competition in credit insurance markets. This rule is based on the National Association of Insurance Commissioners' "Credit Personal Property Insurance Model Act" (Model 365), as amended in 2003.

1.1.b. This rule applies to an insurer or producer transacting credit personal property insurance as defined in this rule and all credit personal property insurance written in connection with credit transactions for personal, family or household purposes. This rule does not include the following:

1.1.b.1. Transactions involving extensions of credit primarily for business or commercial purposes;

1.1.b.2. Insurance on motor vehicles designed for highway use and mobile homes;

1.1.b.3. Insurance written in connection with a credit transaction that is secured by a real estate mortgage or deed of trust;

1.1.b.4. Creditor-placed insurance;

1.1.b.5. Title insurance;

1.1.b.6. Non-filing insurance;

1.1.b.7. Insurance purchased by a creditor after repossession or a similar event where the creditor gains possession of the property; and

1.1.b.8. Insurance for which no identifiable charge is made to or collected from the debtor.

1.2. Authority. -- W. Va. Code §§33-2-10 and 46A-3-109(c).

1.3. Filing Date. -- ~~May 2, 2003.~~

1.4. Effective Date. -- ~~July 31, 2003.~~

§114-61-2. Definitions.

2.1. "Closed-end credit" means a credit transaction that does not meet the definition of open-end credit.

2.2. "Collateral" means personal property in which a purchase money security interest is retained, or that is pledged as security for the satisfaction of a debt.

2.3. "Commissioner" means the West Virginia Insurance Commissioner.

2.4. "Compensation" means commissions, dividends, retrospective rate credits, service fees, expense allowances or reimbursements, gifts, furnishing of equipment, facilities, goods and services or any other form of remuneration that is paid either directly or indirectly as a result of the sale of credit property insurance.

2.5. "Credit agreement" means the written document that sets forth the terms of the credit transaction and includes the security agreement.

2.6. "Credit personal property insurance" means a policy, endorsement, rider, binder, certificate or other instrument or evidence of insurance written in connection with a credit transaction that:

2.6.a. Covers perils to the goods purchased through a credit transaction or used as collateral for a credit transaction and that concerns a creditor's interest in the purchased goods or pledged collateral either in whole or in part; or

2.6.b. Covers perils to goods purchased in connection with an open-end credit transaction.

2.7. "Credit transaction" means a transaction by which the repayment of money loaned or credit commitment made, or payment of goods, services or properties sold or leased, is to be made at a future date or dates.

2.8. "Creditor" means the lender of money or vendor or lessor of goods, services, property, rights or privileges for which payment is arranged through a credit transaction, or any

successor to the right, title or interest of a lender, vendor or lessor and an affiliate, associate or subsidiary of any of them or any director, officer or employee of any of them or any person in any way associated with any of them.

2.9. "Creditor-placed insurance" means insurance that is purchased unilaterally by the creditor, who is the named insured, subsequent to the date of the credit transaction, which provides coverage against loss, expense or damage to the collateralized personal property as a result of fire, theft, collision or other risks of loss that would either impair a creditor's interest or adversely affect the value of collateral covered by dual interest insurance. It is purchased according to the terms of the credit agreement as a result of the debtor's failure to provide required insurance, with the cost of the coverage being charged to the debtor. It shall be either single interest insurance or dual interest insurance.

2.10. "Debtor" means the borrower of money or a purchaser or lessee of goods, services, property, rights or privileges for which payment is arranged through a credit transaction.

2.11. "Dual interest insurance" means credit personal property insurance covering the seller's or creditor's interest and at least partially the borrower's interest in the goods purchased through the credit transaction or pledged as collateral for the credit transaction.

2.12. "Experience" means earned premiums and incurred losses during the experience period.

2.13. "Experience period" means the most recent period of time for which earned premiums and incurred losses are reported, but not for a period longer than three (3) full years.

2.14. "Finance charge" means any charge payable directly or indirectly as an incident to or as a condition of the extension of credit, including but not limited to interest or time price differentials; amount payable under a discount system of additional charges; service, transaction or carrying charges; loan fees; points or similar charges; appraisal fees; or charges incurred for investigating the credit-worthiness of the consumer. The term shall not include charges as a result of default, taxes, license fees, delinquency charges or filing fees.

2.15. "Gross debt" means the sum of the remaining payments owed to the creditor by the debtor.

2.16. "Incurred losses" means total claims and claim adjustment expenses paid during the experience period plus any change in claim and claim adjustment expense reserves.

2.17. "Identifiable charge" means a charge for credit personal property insurance that is made to debtors having such insurance and not made to debtors not having such insurance. It

includes a charge for insurance that is disclosed in the credit or other instrument furnished to the debtor which sets out the financial elements of the credit transaction and any difference in the finance, interest, service or other similar charge made to debtors who are in like circumstances except for the insured or noninsured status of the debtor.

2.18. "Insurance Producer" means a person as defined in W. Va. Code §33-12-2(f), that receives compensation for insurance written or that, on behalf of an insurer or creditor, solicits, negotiates, effects, procures, delivers, renews, continues or binds credit personal property insurance to which this rule applies.

2.19. "Insurer" means insurer as identified in W. Va. Code §33-1-2.

2.20. "Loss ratio" means incurred losses divided by the sum of earned premiums.

2.21. "Mobile home" means "manufactured home" as that term is defined in W. Va. Code §37-15-2(g), "mobile home" as that term is defined in W. Va. Code §37-15-2(h), or "modular home" as that term is defined in W. Va. Code §37-15-2(i).

2.22. "Net debt" means the amount necessary to liquidate the remaining debt in a single lump-sum payment, excluding all unearned interest and other unearned finance charges.

2.23. "Non-filing insurance" means insurance that indemnifies the creditor for loss of its interest in the collateral due to the failure to perfect a security interest.

2.24. "Open-end credit" means credit extended by a creditor under an agreement in which:

2.24.a. The creditor reasonably contemplates repeated transactions;

2.24.b. The creditor imposes a finance charge from time to time on an outstanding unpaid balance; and

2.24.c. The amount of credit that may be extended to the debtor during the term of the agreement, up to any limit set by the creditor, is generally made available to the extent that any outstanding balance is repaid.

2.25. "Reverse competition" means competition among insurers that regularly takes the form of insurers vying with each other for the favor of persons who control, or may control, the placement of the insurance with insurers. Reverse competition tends to increase insurance premiums or prevent the lowering of premiums in order that greater compensation may be paid to persons for such business as a means of obtaining the placement of business. In these situations, the competitive pressure to obtain business by paying higher compensation to these

persons overwhelms any downward pressures consumers may exert on the price of insurance, thus causing prices to rise or remain higher than they would otherwise.

2.26. "Single interest insurance" means credit personal property insurance covering only the seller's or creditor's interest in the goods purchased through the credit transaction or pledged as collateral in the credit transaction.

2.27. "Title insurance" means insurance as defined in W. Va. Code §33-1-10(f)(4).

§114-61-3. Amount, Term and Coverage of Credit Personal Property Insurance; Prohibited Practices.

3.1. For credit personal property insurance sold in conjunction with a closed-end transaction, an insurer may not issue credit personal property insurance coverage unless the amount financed exceeds five hundred dollars.

3.2. For credit personal property insurance sold in conjunction with a closed-end transaction, an insurer may not issue credit personal property insurance in an amount that exceeds the replacement value of the collateral, up to the amount financed in the underlying credit transaction, or with a term that exceeds in duration the scheduled term of the underlying credit transaction: *Provided*, That the debtor may obtain from the insurer, at his or her option, greater coverages for longer periods of time if he or she so desires, as authorized by W.Va. Code §46A-3-109(b)(1).

3.3. Credit personal property insurance coverage shall, at a minimum, include the coverages in the standard fire policy with coverage attachment, extended coverage endorsement, and replacement cost provision endorsement.

3.4. Credit personal property insurance shall cover a substantial risk of loss of or damage to the property related to the credit transaction.

3.5. An insurer may not require the bundling of other credit insurance coverages with the purchase of credit personal property insurance coverage. A debtor shall have the choice to purchase credit personal property insurance separate from other credit insurance coverage.

3.6. An insurer shall not use gross debt as an exposure base in determining credit personal property insurance premiums.

§114-61-4. Disclosure to Debtors; Provisions of Policies; and Certificates of Insurance.

4.1. The following shall be disclosed to the debtor in writing, and may be combined with

other disclosures required by W. Va. Code §46A-3-109(b)(4), or by federal laws and regulations:

4.1.a. That the purchase of credit personal property insurance through the creditor is optional and not a condition of obtaining credit approval;

4.1.b. If more than one kind of credit insurance is being made available to the debtor, that the debtor can purchase credit personal property insurance separately;

4.1.c. That if the consumer has other insurance that covers the risk, he or she may not want or need credit personal property insurance;

4.1.d. That within the first thirty days after receiving the individual policy or certificate of insurance, the debtor may cancel the coverage and have all premium paid by the debtor refunded or credited. Thereafter, the debtor may cancel the policy at any time during the term of the loan and receive a refund of any unearned premium. However, only in those instances where the creditor requires evidence of insurance for the extension of credit, the debtor may be required to offer evidence of alternative insurance acceptable to the creditor at the time of cancellation;

4.1.e. If not already contained in the certificate or policy received contemporaneously with the credit transaction, a brief description of the coverage, including a description of the major perils and exclusions, any deductible, to whom the benefits would be paid, and the premium or premium rate for the credit personal property coverage; and

4.1.f. If the premium or insurance charge is financed, that it will be subject to finance charges at the rate applicable to the credit transaction.

4.2. The disclosures required in subsection 4.1 of this section shall be provided in the following manner:

4.2.a. In connection with credit personal property insurance offered contemporaneously with the extension of credit or offered through direct mail advertisements, the disclosures shall be made in writing and presented to the consumer in a clear and conspicuous manner; and

4.2.b. When the offer of credit personal property insurance is subsequent to the extension of credit or not offered by direct mail advertisements, the disclosures may be provided in conjunction with the offer either orally or electronically so long as written disclosures are provided to the debtor no later than the earlier of:

4.2.b.1. Ten days after the election to purchase the credit personal

property insurance; or

4.2.b.2. The date any other written material is provided to the debtor.

4.3. An offer to extend coverage for an open-end consumer transaction shall include, at the time of the invitation to contract, the written disclosure below in no smaller than twelve-point type. If the solicitation is made by telephone the disclosure may be summarized and given orally, provided that written disclosure is mailed to the debtor within ten days of enrollment.

"This coverage might duplicate existing coverage if you have a residential property insurance policy. It applies to any item of covered property on which you owe a debt. This coverage is primary, so it is the first source to be used in the event of a loss on property it covers. You may cancel this coverage at any time by calling the insurer at the telephone number provided to you, or by writing to the insurer. We are charging you a premium that may be based on things for which a claim cannot be made, such as services, meals or other consumables, entertainment, finance or service fees, loan interest, delivery charges or other insurance premiums."

4.4. All credit personal property insurance shall be evidenced by an individual policy or a certificate of insurance that shall be delivered to the debtor. The individual policy or certificate of insurance shall, in addition to other requirements of law, set forth the following:

4.4.a. The name and home office address of the insurer;

4.4.b. The name or names of the debtor or debtors, or, in the case of a certificate of insurance, the identity by name or otherwise of the debtor or debtors;

4.4.c. The premium or amount of payment by the debtor, except that for open-end credit, the premium rate and balance to which the rate applies shall be specified;

4.4.d. A full description of the coverage or coverages including the amount and term thereof, and any exceptions, limitations, and exclusions;

4.4.e. A statement that the benefits shall be paid to the creditor to reduce or extinguish the unpaid debt or to repair or replace the property and, whenever the amount of loss payment exceeds the unpaid debt, that any excess payment shall be payable to the debtor;

4.4.f. If the scheduled term of the insurance is less than the scheduled term of the credit transaction, a statement to that effect on the face of the individual policy or certificate of insurance in not less than twelve-point bold face type; and

4.4.g. If the policy is issued to cover open-end consumer transactions, it shall provide that the policyholder or certificate holder will be furnished the following disclosure notice with the account statement at least annually in no smaller than twelve-point type:

"You are paying credit property insurance premium based on the outstanding balance of this account. You may cancel this coverage at any time by calling the insurer at the telephone number the insurer has provided to you, or by writing to the insurer. Your premium may be based on things for which a claim cannot be made, such as services, meals or other consumables, entertainment, finance or service fees, loan interest, delivery charges, or other insurance premiums."

4.5. Except as provided in subsection 4.6, the individual policy or group certificate shall be delivered to the debtor upon acceptance of the insurance by the insurer.

4.6. An individual policy or group certificate delivered in conjunction with an open-end credit agreement or any credit personal property insurance requested by the debtor after the date the indebtedness is incurred shall be delivered within thirty days of the date the insurance is requested by the debtor.

§114-61-5. Filing and Approval, of Rates and Forms.

5.1. All policies, certificates of insurance, group and individual applications for insurance and enrollment forms, endorsements and riders delivered or issued for delivery in this state and the schedules of premium rates pertaining thereto shall be filed with the Commissioner and approved according to the provisions of W. Va. Code §§33-6-8, 33-6-9 and 33-20-1, et seq.

§114-61-6. Reasonableness of Benefits in Relation to Premium Charge.

6.1. An insurer may revise its schedule of premium rates from time to time and shall file the revised schedules with the Commissioner pursuant to the filing requirements in section five of this rule. An insurer shall not issue a credit personal property insurance policy for which the premium rates exceed that determined by the approved schedules of the insurer then on file with the Commissioner.

6.2. Benefits provided by credit personal property insurance policies shall be reasonable in relation to the premium charged. This requirement is satisfied if the premium rate charged develops or may reasonably be expected to develop a loss ratio of not less than sixty percent or such other loss ratio as designated by the Commissioner to afford a reasonable allowance for actual and expected loss experience including a reasonable catastrophe provision, general and administrative expenses, reasonable acquisition expenses, reasonable creditor compensation, investment income, premium taxes, licenses, fees, assessments, and reasonable insurer profit.

6.3. For open-end credit transactions, an insurer's rating plan shall address, by grouping of like accounts, the expected variance in the mix of goods purchased that are covered under the credit personal property coverage versus items purchased that are not covered under the credit personal property coverage. Accounts shall be separated into groupings that possess or are expected to possess a similar mix of covered goods purchased versus not covered goods purchased.

§114-61-7. Experience Reports and Triennial Filing Requirements.

7.1. An insurer doing insurance business in this state shall annually file with the Commissioner and the National Association of Insurance Commissioners (NAIC) a report of credit personal property insurance written on a calendar year basis. The report shall utilize the Credit Insurance Supplement–Annual Statement Blank approved by the NAIC, and shall contain data separately for each state, rather than an allocation of the company's countrywide experience. The filing shall be made in accordance with and no later than the due date in the Instructions to the Annual Statement.

7.2. Rates that have been filed and approved pursuant to section 5 of this rule are effective for a period not to exceed three (3) years. An insurer shall file a new rate or support the previously approved rate before the three-year period expires. An insurer may file for a new rate before the end of the three-year period.

§114-61-8. Cancellation and Refund of Unearned Premium.

8.1. Upon cancellation for any reason, the debtor is entitled to a refund of unearned premiums calculated on a daily pro rata basis. No refunds of less than one dollar are required.

§114-61-9. Claims.

9.1. All claims shall be promptly reported by the creditor to the insurer or its designated claim representative, and the insurer shall maintain adequate claim files. All claims shall be settled as soon as possible and in accordance with the terms of the insurance contract.

9.2. All claims shall be paid either by draft drawn upon the insurer, by electronic funds transfer, or by check of the insurer to the order of the claimant to whom payment of the claim is due pursuant to the policy provisions, or upon direction of the claimant to the party specified by the claimant.

9.3. No plan or arrangement may be used whereby any person, firm or corporation other than the insurer or its designated claim representative is authorized to settle or adjust claims. The creditor may not be designated as claim representative for the insurer in adjusting claims:

Provided, that once the amount is determined a group policyholder may, by arrangement with the group insurer, draw drafts, checks or electronic transfers in payment of claims due to the group policyholder subject to audit and review by the insurer.

9.4. No claim may be denied because the debtor was ineligible for coverage later than ninety days after the initiation of coverage unless the debtor misrepresented a material fact. If a claim is denied because the debtor was ineligible for coverage within ninety days after initiation of coverage or because the debtor misrepresented a material fact for coverage, the insurer shall refund to the debtor all premium paid and the creditor shall refund any finance charge paid on the premium.

9.5. All claims for credit personal property insurance shall be subject to W. Va. Code §33-11-4(9).