



WEST VIRGINIA LEGISLATURE
Legislative Rule-Making Review Committee

*Building 1, Room MB-49
1900 Kanawha Boulevard, East
Charleston, WV 25305-0610
(304) 347-4840
(304) 347-4919 FAX*

email: tanders@mail.wvnet.edu

OFFICE WEST VIRGINIA
SECRETARY OF STATE

2002 DEC 17 A 10:14

FILED

*Senator Mike Ross, Cochair
Delegate Virginia Mahan, Cochair
Debra A. Graham, Counsel*

December 17, 2002

*Joseph A. Altizer, Associate Counsel
Connie A. Bowling, Associate Counsel
Teri Anderson, Administrative Assistant*

NOTICE OF ACTION TAKEN BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Joe Manchin, Secretary of State, State Register

TO: Mary Jane Pickens
Insurance Commissioner
Capitol Complex
Box 50540

FROM: Legislative Rule-Making Review Committee

Proposed Rule: **Credit Personal Property Insurance, 114CSR61**

The Legislative Rule-Making Review Committee recommends that the West Virginia Legislature:

1. Authorize the agency to promulgate the Legislative rule
 - (a) as originally filed
 - (b) as modified by the agency
2. Authorize the agency to promulgate part of the Legislative rule; a statement of reasons for such recommendation is attached.
3. Authorize the agency to promulgate the Legislative rule with certain amendments; amendments and a statement of reasons for such recommendation is attached.
4. Authorize the agency to promulgate the Legislative rule as modified with certain amendments; amendments and a statement of reasons for such recommendation is attached.
5. Recommends that the Legislative rule be withdrawn; a statement of reasons for such recommendation is attached.

SCANNED

ANALYSIS OF PROPOSED LEGISLATIVE RULES

FILED

Agency: West Virginia Insurance Commission
Subject: Credit Personal Property Insurance (114 CSR 61)
Date: October 4, 2002
Staff Counsel: Connie A. Bowling

2002 NOV 13 A 10:12
WEST VIRGINIA
SECRETARY OF STATE

PERTINENT DATES

Filed for public comment: May 29, 2002
Public comment period ended: July 1, 2002
Filed following public comment period: July 26, 2002
Filed LRMRC: July 26, 2002
Filed as emergency: N/A

Fiscal Impact: None

ABSTRACT

This is a new rule which is intended to regulate sales of insurance to cover damage or loss to personal property purchased through consumer credit transactions or pledged as collateral in connection with a consumer credit transaction. Current rules govern only credit life insurance and credit accident & sickness insurance. 114CSR6. The intent of the rule is to protect consumers from predatory practices.

The rule applies to an insurer or agent selling credit personal property (CPP) insurance and to CCP insurance written in connection with consumer credit transactions for personal, family or household purposes, but does not apply to:

- extensions of credit primarily for business or commercial purposes
- insurance on highway motor vehicles and mobile homes
- credit transactions secured by a deed of trust

- insurance purchased by the creditor
- title insurance
- non-filing insurance
- insurance for which the consumer is not charged

The rule prohibits issuance of CPP insurance in conjunction with a closed-end transaction for \$500 or less, in an amount that exceeds the replacement value of the collateral, up to the amount financed, or for a term longer than the scheduled term of the underlying credit transaction, but allows the consumer to buy additional coverage if desired.

CPP insurance must contain the coverages in a standard fire policy, with coverage attachment, extended coverage endorsement and replacement cost provision endorsement, and must cover as substantial risk of loss or damage to property. An insurer is prohibited from bundling CPP with other credit insurance and from using gross debt as an exposure base in determining CPP insurance premiums.

Under the rule, the seller of CPP insurance must disclose, in writing, to the consumer

- that the purchase of CPP is optional and may be made separately from purchase of other credit insurance
- that the consumer may not want to purchase CPP if he/she already has insurance that covers the risk of loss
- that the consumer may cancel CPP coverage w/in 30 days and receive a refund of all premiums
- that after 30 days, the consumer may cancel CPP coverage at any time and get a refund of unearned premiums
- a brief description of the coverage, including the major perils and exclusions, deductibles, beneficiaries and the premium rate
- if the premium is financed that it will be subject to the finance charge applicable to the credit transaction

If the offer of CPP coverage is made by direct mail, the disclosure must be in writing and presented to the consumer in a clear and conspicuous manner. If the offer is not by direct mail, disclosure may be made orally or electronically so long as a written disclosure is made w/in 10 days or the date other written material is provided to the consumer, whichever is later.

The rule also requires any offer to extend coverage in an open-end transaction to contain a specific written disclosure, in specified type size, that the coverage may duplicate homeowners insurance and that CPP may be canceled by the consumer at any time.

The rule requires all CPP insurance to be by separate policy or certificate, delivered to the consumer upon acceptance of the insurance (or w/in 30 days) which specifies:

- the name & home office address of the insurer
- the name of the consumer
- the premium or premium rate to be charged
- a full description of the coverage, including the amount and term
- a statement that benefits are paid to the creditor to cover the unpaid debt
- a statement if the term of the insurance is less than the term of the transaction
- a notice to credit card consumers that the premium is based on the outstanding balance of the card, which may include services and goods for which a claim cannot be made

The rule requires all policies, certificates of insurance, group and individual applications, enrollment forms, endorsements, riders, and schedules of premium rates to be submitted to and approved by the Commissioner.

The rule requires CPP insurers to file a schedule of premium rates with the Commissioner and specifies that benefits must be reasonable in relation to the premium charged, the prima facie standard being not less than a 60% loss ratio. The insurer, however, may petition the Commissioner for approval of a higher loss ratio for actual or expected loss experience.

Under the rule insurers are required to file an annual report of CPP insurance written, by state, with the Commissioner and the NAIC. Upon cancellation of the CPP insurance, the consumer is entitled to refund of all unearned premiums calculated on a daily pro rata basis. Refunds of less than \$1.00 are not required.

The rule requires creditors to promptly file notice of claims with the insurer, and the insurer is required to maintain adequate claim files. The rule strongly encourages timely settlement of

claims, sets for the manner in which claims may be paid, prohibits anyone other than the insurer, particularly the creditor, from being authorized to settle claims on behalf of the insurer, and makes all claims to be subject to WVC 33-11-4(9) (unfair claims settlement practices). The rule also specifies circumstances in which a claim may be denied because the consumer was ineligible for coverage.

AUTHORITY

Statutory authority:

W. Va. Code § 33-2-10:

The commissioner is authorized to promulgate and adopt such rules and regulations relating to insurance as are necessary to discharge his duties and exercise his powers and to effectuate the provisions of this chapter and to protect and safeguard the interests of policyholders and the public of this State.

W. Va. Code § 46A-3-109(c):

The insurance commissioner of this state shall promulgate legislative rules in accordance with the provisions of chapter twenty-nine-a of this code to implement the provisions of this article relating to insurance, and the authority of the insurance commissioner to promulgate the rules is exclusive notwithstanding any other provisions of this code to the contrary.

ANALYSIS

I. HAS THE AGENCY EXCEEDED THE SCOPE OF ITS STATUTORY AUTHORITY IN APPROVING THE PROPOSED LEGISLATIVE RULE?

No.

II. IS THE PROPOSED LEGISLATIVE RULE IN CONFORMITY WITH THE INTENT OF THE STATUTE WHICH THE RULE IS INTENDED TO IMPLEMENT, EXTEND, APPLY, INTERPRET OR MAKE SPECIFIC?

Yes.

III. DOES THE PROPOSED LEGISLATIVE RULE CONFLICT WITH OTHER CODE PROVISIONS OR WITH ANY OTHER RULE ADOPTED BY THE SAME OR A DIFFERENT AGENCY?

No.

IV. IS THE PROPOSED LEGISLATIVE RULE NECESSARY TO FULLY ACCOMPLISH THE OBJECTIVES OF THE STATUTE UNDER WHICH THE PROPOSED RULE WAS PROMULGATED?

Yes.

V. IS THE PROPOSED LEGISLATIVE RULE REASONABLE, ESPECIALLY AS IT AFFECTS THE CONVENIENCE OF THE GENERAL PUBLIC OR OF PERSONS AFFECTED BY IT?

Yes.

VI. CAN THE PROPOSED LEGISLATIVE RULE BE MADE LESS COMPLEX OR MORE READILY UNDERSTANDABLE BY THE GENERAL PUBLIC?

No.

VII. WAS THE PROPOSED LEGISLATIVE RULE PROMULGATED IN COMPLIANCE WITH THE REQUIREMENTS OF CHAPTER 29A, ARTICLE 3 AND WITH ANY REQUIREMENTS IMPOSED BY ANY OTHER PROVISION OF THE CODE?

Yes.

VIII. OTHER.

None.