

Memorandum

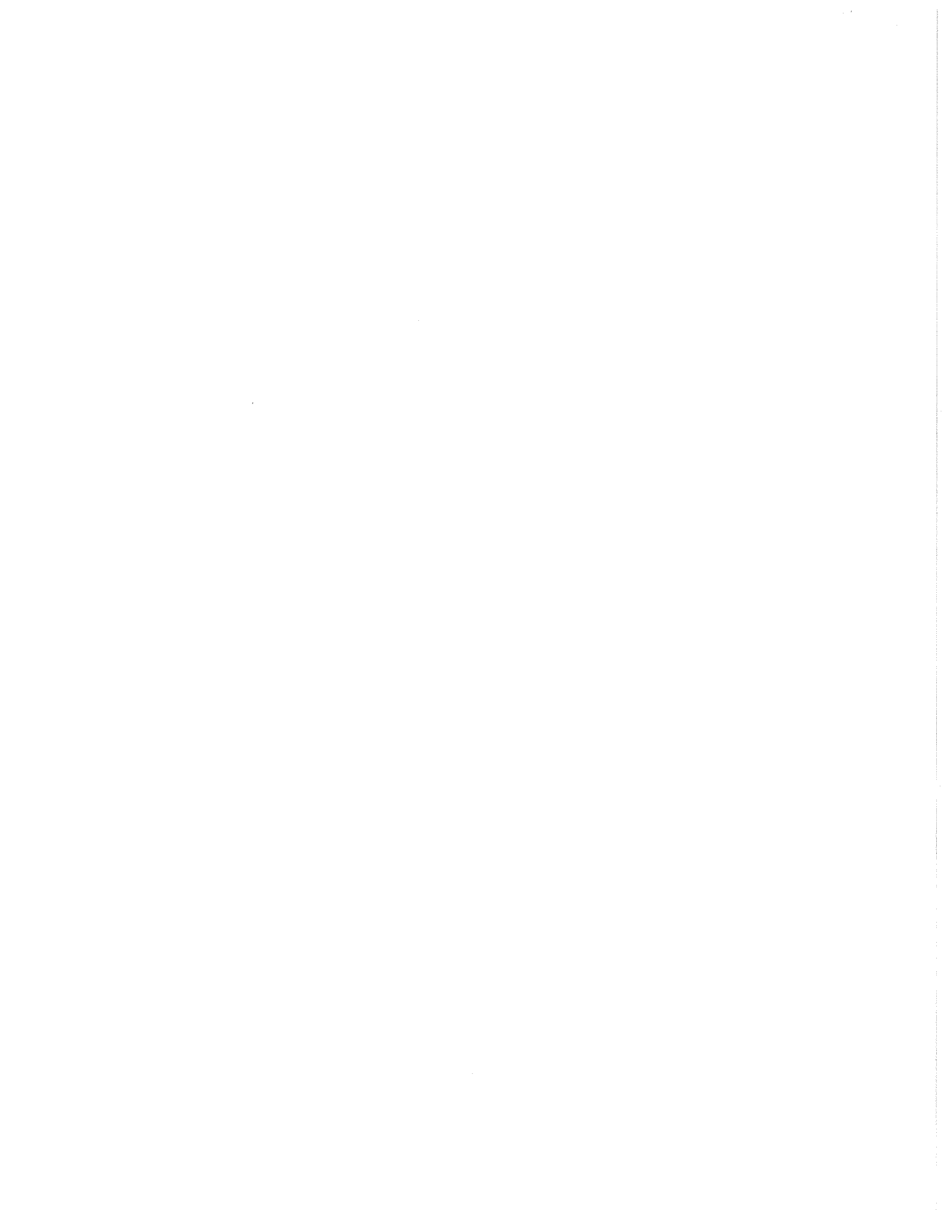
To: Members of the (EX) Committee on Credit Insurance and Interested Parties

From: John Mancini, Market Affairs Manager
Mark Peavy, Life/Health Actuary

Date: July 8, 1996

The (EX) Committee on Credit Insurance met on June 2-3, 1996 in New York, NY and completed work on the Creditor-Placed Insurance Model Act. Attached is a copy of the model Act which was adopted by the Committee on June 3, 1996.

If you should have any questions or comments, please feel free to contact us at (816) 842-3600.



CREDITOR-PLACED INSURANCE MODEL ACT

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Section 1. Purpose

The purposes of this Act are to:

- A. Promote the public welfare by regulating creditor-placed insurance;
- B. Create a legal framework within which creditor-placed insurance may be written in this state;
- C. Help maintain the separation between creditors and insurers; and
- D. Minimize the possibilities of unfair competitive practices in the sale of creditor-placed insurance.

Section 2. Scope

- A. This Act applies to an insurer or producer transacting creditor-placed insurance as defined in this Act.

- B. All creditor-placed insurance written in connection with credit transactions for personal, family or household purposes is subject to the provisions of this Act, except:
- (1) Transactions involving extensions of credit primarily for business or commercial purposes;
 - (2) Insurance on collateralized real property;

Drafting Note: States have various definitions of “real property.” Accordingly, the states may wish to consider their state definition of “real property,” especially with the varying nature of manufactured housing used as a residence.

- (3) Insurance offered by the creditor and elected by the debtor at the debtor’s option;
- (4) Insurance for which no specific charge is made to the debtor or the debtor’s account; or
- (5) Blanket insurance, whether paid for by the debtor or the creditor.

Drafting Note: Nothing in this Act shall be construed to create or imply a private cause of action for violation of this Act, and the commissioner shall have authority to bring an administrative or judicial proceedings to enforce this Act. Furthermore, nothing in this Act shall be construed to extinguish any debtor rights available under common law or other state statutes.

Section 3. Definitions

As used in this Act:

- A. “Actual cash value (ACV)” means the cost of replacing damaged or destroyed property with comparable new property, minus depreciation and obsolescence.

Drafting Note: The definition of “actual cash value (ACV)” shall not be interpreted in any manner inconsistent with the meaning of actual cash value as used in the states’ unfair claims settlement practices laws or regulations.

- B. “Blanket insurance” means insurance that provides coverage on collateral as defined in a policy issued to a creditor, without specifically listing the collateral covered.
- C. “Collateral” means personal property that is pledged as security for the satisfaction of a debt.

- D. "Credit agreement" means the written document that sets forth the terms of the credit transaction and includes the security agreement.
- E. "Credit transaction" means a transaction by the terms of 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.
- F. "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.
- G. "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, providing coverage against loss, expense or damage to 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 limited 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 physical damage insurance, with the cost of the coverage being charged to the debtor. It shall be either single interest insurance or limited dual interest insurance.
- H. "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.
- I. "Insurance tracking" means monitoring evidence of insurance on collateralized credit transactions to determine whether insurance required by the credit agreement has lapsed, and communicating with debtors concerning the status of insurance coverage.
- J. "Insurer" means an insurance company, association or exchange authorized to issue insurance policies in the state of [insert applicable state].
- K. "Lapse" means that the insurance coverage required by the credit agreement is not in force.
- L. "Limited dual interest insurance" means insurance purchased by the creditor to insure its interest in the collateral securing the debtor's credit transaction. This insurance waives the three (3) conditions for loss payment under single interest insurance and extends coverage on the collateral while in the possession of the debtor.

- M. "Loss ratio" means the ratio of incurred losses to earned premium.
- N. "Net debt" means the amount necessary to liquidate the remaining debt in a single lump-sum payment, excluding all unearned interest and other unearned charges.
- O. "Producer" means a person who receives a commission for insurance placed or written or who, on behalf of an insurer or creditor, solicits, negotiates, effects, procures, delivers, renews, continues or binds policies of insurance to which this Act applies, except a regular salaried officer, employee or other representative of an insurer who devotes substantially all working time to activities other than those specified here and who receives no compensation that is directly dependent on the amount of insurance business written, and except a regular salaried officer or employee of a creditor who receives no compensation that is directly dependent on the amount of insurance effected or procured.
- P. "Single interest insurance" means insurance purchased by the creditor to insure its interest in the collateral securing a debtor's credit transaction. Three (3) conditions must be met for payment of loss under the policy:
- (1) The debtor has defaulted in payment;
 - (2) The creditor has legally repossessed the collateral, unless collateral has been stolen from the debtor; and
 - (3) The creditor has suffered an impairment of interest.

Drafting Note: Some states have expressed the opinion that the above conditions, particularly Paragraph (2), are not in the best interests of consumers. Those states may wish to eliminate this definition and prohibit the offering of single interest insurance.

Section 4. Term of Insurance Policy

- A. Creditor-placed insurance shall become effective on the latest of the following dates:
- (1) The date of the credit transaction:
 - (2) The date prior coverage, including prior creditor-placed insurance coverage, lapsed;
 - (3) One year before the date on which the related insurance charge is made to the debtor's account; or
 - (4) A later date provided for in the agreement between the creditor and insurer.

- B. Creditor-placed insurance shall terminate on the earliest of the following dates:
- (1) The date other acceptable insurance becomes effective, subject to the debtor providing acceptable evidence of the other insurance to the creditor;
 - (2) The date the collateralized personal property is repossessed, unless the property is returned to the debtor within ten (10) days of the repossession;
 - (3) The date the collateralized personal property is determined by the insurer to be a total loss;
 - (4) The date the debt is completely extinguished; or
 - (5) An earlier date specified in the individual policy or certificate of insurance.
- C. An insurance charge shall not be made to a debtor for a term longer than the scheduled term of the creditor-placed insurance when it becomes effective, nor may an insurance charge be made to the debtor for creditor-placed insurance before the effective date of the insurance.
- D. If a charge is made to a debtor for creditor-placed insurance coverage that exceeds a term of one year, the debtor shall be notified at least annually that the insurance will be canceled and a refund or credit of unearned charges made if evidence of acceptable insurance secured by the debtor is provided.

Section 5. Calculation and Payment of Premiums

- A. Premiums for creditor-placed insurance coverage may be calculated based on:
- (1) An amount not exceeding the net debt even though the coverage may limit the insurer's liability to the net debt, actual cash value or cost of repair; or
 - (2) Other premium calculation methods that more closely reflect the exposure of each item insured and approximate the premium calculation method of the coverage required by the credit agreement.
- B. An insurer shall not write creditor-placed insurance for which the premium rate differs from that determined by the schedules of the insurer on file with the commissioner. The premium or amount charged to the debtor for creditor-placed insurance shall not exceed the premiums charged by the insurer, computed at the time the charge to the debtor is determined.

- C. A method of billing insurance charges to the debtor on closed-end credit transactions that creates a balloon payment at the end of the credit transaction or extends the credit transaction's maturity date is prohibited, unless specifically disclosed at the time of the origination of the credit agreement and specifically agreed to by the debtor at the time the charge is added to the outstanding credit balance.

Drafting Note: States should consider the extent to which state banking or consumer finance laws, including truth-in-lending laws, need to be referenced or amended to meet the intent and requirements of Subsection C.

Section 6. Prohibited Coverages

- A. Creditor-placed insurance coverage shall not include:
- (1) Coverage for the cost of repossession;
 - (2) Skip, confiscation and conversion coverage;
 - (3) Coverage for payment of mechanics' or other liens that do not arise from a covered loss occurrence;
 - (4) Coverage that requires a debtor's insurance deductible to be less than \$250; or
 - (5) Coverage that is broader than the insurance coverages that meet the minimum insurance requirements of the credit agreement.
- B. Nothing in this section shall be deemed to prohibit the issuance of a separate policy or endorsement providing the coverages listed in Subsection A above. However, no charge shall be passed along to the debtor for the coverages.

Section 7. Evidence of Coverage

Creditor-placed insurance shall be set forth in an individual policy or certificate of insurance. A copy of the individual policy, certificate of insurance coverage, or other evidence of insurance coverage shall be mailed, first class mail, or delivered in person to the last known address of the debtor.

Section 8. Filing, Approval and Withdrawal of Forms and Rates

- A. All policy forms and certificates of insurance to be delivered or issued for delivery in this state and the schedules of premium rates pertaining thereto shall be filed with the commissioner.

- B. The commissioner shall within thirty (30) days after the filing of the policy forms and certificates of insurance disapprove a form that does not conform to this Act or to other applicable provisions of the insurance statutes and regulations and shall, within thirty (30) days of filing, disapprove a schedule of premium rates pertaining to the form if it does not conform to the standard set forth in Subsection E.
- C. If the commissioner disapproves a form or schedule of premium rates in accordance with Subsection B, the commissioner shall promptly notify the insurer in writing of the disapproval, and it shall be unlawful for the insurer to issue or use the form or schedule. In the notice, the commissioner shall specify the reasons for disapproval and state that a hearing will be granted upon request pursuant to [insert code section for the state's administrative procedures statute or other law or regulation for hearing requests on rate and form filings].
- D. Unless the commissioner disapproves the form or schedule of premium rates in accordance with Subsections B and C or gives written approval of the form or schedule within thirty (30) days after the filing, the form or schedule shall be deemed approved on the thirty-first day after the filing.

Drafting Note: States should choose one of the following two alternatives for Subsection E to prescribe the method by which premium rates are determined to be reasonable in relation to the benefits provided under the policy.

Alternative 1:

- E. The schedules of premium rates shall not be excessive, inadequate or unfairly discriminatory. In determining whether a schedule of premium rates are excessive, inadequate or unfairly discriminatory, the commissioner shall take into account past and prospective loss experience, general and administrative expenses, loss settlement and adjustment expenses, reasonable creditor compensation and other acquisition costs including insurance tracking costs, reserves, taxes, licenses, fees and assessments, reasonable insurer profit and other relevant data. Rates are not unfairly discriminatory because different premiums result for different policyholders, including group policyholders, with similar loss exposures but different expense factors or similar expense factors but different loss exposures, nor are rates unfairly discriminatory if they are averaged broadly among all persons insured in this state or all persons insured under a group insurance policy.

Alternative 2:

- E. A schedule of premium rates shall provide for premiums that are not unreasonable in relation to the benefits provided by the form to which the schedule applies. A premium rate or schedule of premium rates shall be presumed to be reasonable for purposes of this section if the rate or schedule or rates produces or may reasonably

