

**SUBCHAPTER FF. CREDIT LIFE AND CREDIT ACCIDENT AND HEALTH
INSURANCE
DIVISION 10. RESPONSIBILITIES AND OBLIGATIONS OF INSURANCE
COMPANIES AND THEIR AGENTS AND REPRESENTATIVES
28 TAC §3.6011**

1. INTRODUCTION. The Texas Department of Insurance proposes amending Title 28 Texas Administrative Code §3.6011, concerning the adoption of the *Consumer Bill of Rights for Credit Life, Credit Disability, and Involuntary Unemployment Insurance* (Consumer Bill of Rights) that is required to be provided by insurers to the insured with each new policy or renewal notice.

The department regulates credit life, credit disability, and credit involuntary unemployment insurance under Insurance Code Chapter 1153. Insurance Code §501.156 requires the Office of Public Insurance Counsel (OPIC) to submit to the department for adoption a consumer bill of rights appropriate to each personal line of insurance regulated by the department. On May 3, 2012, the department received a petition from OPIC, requesting the adoption of a revised Consumer Bill of Rights. On July 6, 2012, proposed amendments to §3.6011 that included adoption of a revised Consumer Bill of Rights were published in the *Texas Register* (37 TexReg 5080). The proposed rules and a revised Consumer Bill of Rights were adopted on November 16, 2012 (37 TexReg 9093).

An apparent conflict between the Insurance Code and the Finance Code affects the Consumer Bill of Rights. The department proposes to amend one right contained in the Consumer Bill of Rights in order to resolve the conflict. Specifically, Insurance Code §1153.201 provides, in pertinent part, that “[a] creditor may not charge

a debtor for credit life or credit accident and health insurance . . . an amount that exceeds the amount of the premium that the insurer charges the creditor for that insurance. . . .” Finance Code §342.308, however, provides that credit insurance premiums may be included in the principal of a loan. Section 342.308, and other Finance Code provisions indicate an intention to permit credit insurance premiums to be included in the principal and thus subject to the interest rate applied to the financed transaction. The department believes that this conflict may be resolved by modifying the Consumer Bill of Rights to track Insurance Code language stating that the charge for credit insurance may not be more than the premium charged by the insurer, and by deleting the reference to fees and interest, since these are addressed by the Finance Code. The amended Consumer Bill of Rights is adopted in §3.6011(a) and the Spanish language version is adopted in §3.6011(c) of the proposed rule.

The Consumer Bill of Rights adopted by the commissioner in November was required to be utilized by carriers for policies issued after February 11, 2013. Pursuant to this proposal, the department intends adoption of the revised Consumer Bill of Rights prior to that date. Nevertheless, the department advises carriers that until the revised Consumer Bill of Rights is adopted and becomes effective, they may utilize either the form adopted November 16, 2012, or the prior Consumer Bill of Rights, at their option.

2. FISCAL NOTE. Jan Graeber, director/chief actuary, Rate and Form Review Office, has determined that, for each year of the first five years the proposed section is in effect, there will be no fiscal impact on state or local government as a result of the

enforcement or administration of the proposal. There will be no measurable effect on local employment or the local economy as a result of the proposal.

3. PUBLIC BENEFIT/COST NOTE. Ms. Graeber also has determined that for each year of the first five years the proposed section is in effect, the public benefits anticipated as a result of the proposal include consumer education of policyholders of credit life, credit disability, and credit involuntary unemployment insurance.

ANTICIPATED COSTS TO COMPLY WITH THE PROPOSAL.

Insurers must provide policyholders with copies of the updated Consumer Bill of Rights with each new policy and renewal notice. The requirement to provide this document is not an additional duty on insurers, and the only costs to comply will be in generating the revised Customer Bill of Rights. Based on the length of the Consumer Bill of Rights, the department estimates that the cost per new policy and certificate, renewal, or request for the Spanish language version, will be between 24 cents and 32 cents plus any marginal increase in postage. The department recognizes that some methods insurers might choose to comply with this requirement may exceed the department's estimated costs. This amendment should have no impact on affected insurers because they have had ample advance notice of the upcoming revised Consumer Bill of Rights to take appropriate action to mitigate their costs. If an insurer has already transitioned to the revised Consumer Bill of Rights, the department advises that carriers may utilize either previously adopted version until the new Consumer Bill of Rights becomes effective pursuant to this rulemaking.

4. ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS

FOR SMALL AND MICRO BUSINESSES. Government Code §2006.002(c) provides that if a proposed rule may have an economic impact on small businesses, state agencies must prepare as part of the rulemaking process an economic impact statement that assesses the potential impact of the proposed rule on small businesses and a regulatory flexibility analysis that considers alternative methods of achieving the purpose of the rule. Government Code §2006.001(2) defines “small business” as a legal entity, including a corporation, partnership, or sole proprietorship, that is formed for the purpose of making a profit; is independently owned and operated; and has fewer than 100 employees or less than \$6 million in annual gross receipts. Government Code §2006.001(1) defines a “micro business” as a legal entity, including a corporation, partnership, or sole proprietorship, that is formed for the purpose of making a profit; is independently owned and operated; and has not more than 20 employees. Government Code §2006.002(f) requires a state agency to adopt provisions concerning micro businesses that are uniform with those provisions outlined in Government Code §2006.002(b) – (d) for small businesses.

In accord with Government Code §2006.002(c), the department has determined that the proposal may have an adverse economic impact on small and micro businesses that sell credit life, credit disability, and credit involuntary unemployment insurance coverage. The department has determined that approximately 56 carriers have filed credit insurance policy forms with the department in the past ten years. The department believes that one or more of the 56 carriers is a small or micro business pursuant to Government Code §2006.002(c). The adverse economic impact results

from the costs associated with the requirement to print and distribute the Consumer Bill of Rights. These costs are stated in the Public Benefit/Cost Note part of this proposal.

The department, in accord with Government Code §2006.002(c-1), has considered the following alternative methods of achieving the purpose of the proposed rule: (i) reduce the length of the Consumer Bill of Rights for small and micro business insurers writing personal lines credit life, credit disability, and credit involuntary unemployment insurance coverage; or (ii) exempt small and micro business insurers from providing copies of the revised Consumer Bill of Rights to existing policyholders upon renewal.

The department has determined that these alternatives for small and micro businesses are neither legal nor feasible because the purpose of the Consumer Bill of Rights is to ensure that current and future policyholders of credit life, credit disability, and credit involuntary unemployment insurance receive accurate information and are properly informed of their rights. Providing a different version of the Consumer Bill of Rights or not providing a Consumer Bill of Rights at all would leave out important consumer information and impede consumer access to current rights regarding credit insurance. Either alternative would frustrate the purpose of Insurance Code §501.156 and would be inconsistent with the health, safety, environmental, and economic welfare of the state.

5. TAKINGS IMPACT ASSESSMENT. The department has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of

government action and, therefore, does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

6. REQUEST FOR PUBLIC COMMENT. If you wish to comment on this proposal, or to request a hearing, you must do so in writing no later than 5:00 p.m. on February 19, 2013. A hearing request must be on a separate page from any written comments. The department requires two copies of your comments or hearing request. Send your comments or request for hearing to the Chief Clerk, by email at: chiefclerk@tdi.texas.gov or by mail at: Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. Send a copy simultaneously to Jan Graeber, by email at: LHLcomments@tdi.texas.gov or by mail at: Rate and Form Review Office, Mail Code 106-1A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. If a hearing is held, written and oral comments presented at the hearing will be considered.

7. STATUTORY AUTHORITY. The amendment is proposed pursuant to Insurance Code §501.156 and §36.001. Section 501.156 requires OPIC to submit to the department for adoption a consumer bill of rights appropriate to each personal line of insurance regulated by the department to be distributed on issuance of a policy by an insurer to each policyholder. Section 36.001 provides that the commissioner of insurance may adopt any rules necessary and appropriate to implement the powers and duties of the department under the Insurance Code and other laws of this state.

8. CROSS REFERENCE TO STATUTE. The proposed amendments implement the following statute:

Rule	Statute
§3.6011	Insurance Code §501.156

9. TEXT.

§3.6011. Responsibility and Obligation of Insurers to Provide Copies of Consumer Bill of Rights for Credit Life, Credit Disability, and Credit Involuntary Unemployment Insurance to Each Insured.

(a) The commissioner adopts ~~[by reference]~~ the Consumer Bill of Rights for Credit Life, Credit Disability, and Credit Involuntary Unemployment Insurance ~~[form]~~. All insurers writing credit life, credit disability, and credit involuntary unemployment insurance policies must provide with each new policy and certificate of credit life, credit disability, and credit involuntary unemployment insurance a copy of the Texas Department of Insurance Consumer Bill of Rights for Credit Life, Credit Disability, and Credit Involuntary Unemployment Insurance. ~~[This form is filed with the Office of the Secretary of State, Texas Register Section. The form can be obtained from the Texas Department of Insurance, Rate and Form Review Office, MC 106-1A, P.O. Box 149104, Austin, Texas 78714-9104. The form can also be obtained from the department's internet web site at <http://www.tdi.texas.gov>.]~~ The Consumer Bill of Rights for Credit Life, Credit Disability, and Credit Involuntary Unemployment Insurance ~~[shall]~~ must accompany each renewal notice for credit life, credit disability, and credit

involuntary unemployment insurance unless the current version of the form has been previously provided to the insured by the insurer.

Figure: 28 TAC § 3.6011(a)

(b) (No change.)

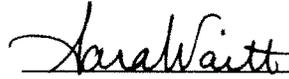
(c) The commissioner adopts ~~[by reference]~~ the Spanish language version of the Consumer Bill of Rights for Credit Life, Credit Disability, and Credit Involuntary Unemployment Insurance ~~[form]. [The Department has promulgated a Spanish language version of this form that has been filed with the Secretary of State's Office.]~~ The Spanish language version of the Consumer Bill of Rights for Credit Life, Credit Disability, and Credit Involuntary Unemployment Insurance must be provided to any consumer who requests it from the company. ~~[The form can be obtained from the Texas Department of Insurance, Rate and Form Review Office, MC 106-1A, P.O. Box 149104, Austin, Texas 78714-9104. The form can also be obtained from the department's internet web site at <http://www.tdi.texas.gov>.]~~

Figure: 28 TAC § 3.6011(c)

(d) and (e) (No change.)

10. CERTIFICATION. This agency certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued at Austin, Texas, on January 4 2012.



Sara Waitt
General Counsel
Texas Department of Insurance