

CREDIT PERSONAL PROPERTY INSURANCE MODEL ACT

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Section 1. Purpose

- A. The purposes of this Act 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 the problems arising from reverse competition in credit insurance markets.
- B. Nothing in this Act is intended to prohibit or discourage reasonable competition. The provisions of this Act shall be liberally construed.

Section 2. Scope

- A. This Act applies to an insurer or producer transacting credit personal property insurance as defined in this Act.
- B. All credit personal property insurance written in connection with credit transactions for personal, family or household purposes is subject to the provisions of this Act, except:

Drafting Note: A state may wish to authorize the commissioner to adopt the consumer protections in this model as a regulation. If so, this model can generally be adopted as a regulation with minor editorial changes.

- (1) Transactions involving extensions of credit primarily for business or commercial purposes;
- (2) Insurance on motor vehicles designed for highway use and mobile homes;
- (3) Insurance written in connection with a credit transaction that is secured by a real estate mortgage or deed of trust;
- (4) Creditor-placed insurance;
- (5) Title insurance;
- (6) Non-filing insurance; and
- (7) Insurance purchased by a creditor after repossession or a similar event where the creditor gains possession of the property; and
- (8) Insurance for which no identifiable charge is made to or collected from the debtor.

Section 3. Definitions

As used in this Act:

- A. "Closed-end credit" means a credit transaction that does not meet the definition of open-end credit.
- B. "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.
- C. "Commissioner" means the insurance supervisory authority of the state.
- D. "Compensation" means commission, 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.
- E. "Credit agreement" means the written document that sets forth the terms of the credit transaction and includes the security agreement.
- F. "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:
 - (1) 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) Covers perils to goods purchased in connection with an open-end credit transaction.

- G. “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.
- H. “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.
- I. “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, has provided 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.
- J. “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.
- K. “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.
- L. “Experience” means earned premiums and incurred losses during the experience period.
- M. “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.
- N. “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, 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 terms shall not include charges as a result of default, taxes, license fees, delinquency charges or filing fees.
- O. “Gross debt” means the sum of the remaining payments owed to the creditor by the debtor.
- P. “Incurred losses,” means total claims and claim adjustment expenses paid during the experience period plus any change in claim and claim adjustment expense reserves.
- Q. “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.

- R. “Insurer” means insurer as identified in [insert section of Code].
- S. “Loss ratio” means incurred losses divided by the sum of earned premiums.
- T. “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.
- U. “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.
- V. “Open-end credit” means credit extended by a creditor under an agreement in which:
 - (1) The creditor reasonably contemplates repeated transactions;
 - (2) The creditor imposes a finance charge from time to time on an outstanding unpaid balance; and
 - (3) 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.
- W. “Producer” means a person or entity 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 Act applies.
- X. “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.
- Y. “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.
- Z. “Title insurance” means insurance that compensates for loss from title defects or encumbrances that were unknown but should have been discovered at the time the policy was issued.

Section 4. Amount, Term, Coverage and Prohibited Practices

- A. 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 \$[insert amount].
- B. 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 amount of the underlying credit transaction unless otherwise required by [insert state lending law cite].

- C. For credit personal property insurance sold in conjunction with a closed end transaction, an insurer may not sell credit personal property insurance with a term that exceeds in duration the scheduled term of the underlying credit transaction.
- D. Credit personal property insurance coverage shall, at a minimum, include the coverages in the standard fire policy with coverage attachment, and extended coverage endorsement.
- E. Credit personal property insurance shall cover a substantial risk of loss of or damage to the property related to the credit transaction.
- F. 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.
- G. An insurer shall not use gross debt as an exposure base in determining credit personal property insurance premiums.

Section 5. Disclosure to Debtors and Provisions of Policies and Certificates of Insurance

- A. Pre-purchase disclosure. The following shall be disclosed to the debtor in writing, and may be combined with other disclosures required by [insert state lending law cite] or by federal laws and regulations;
 - (1) That the purchase of credit personal property insurance through the creditor is optional and not a condition of obtaining credit approval;
 - (2) 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;
 - (3) That if the consumer has other insurance that covers the risk, he or she may not want or need credit personal property insurance;
 - (4) That within the first thirty (30) days after receiving the individual policy or certificate of insurance, the debtor may cancel the coverage and have all premiums 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 or any of the unearned premiums. 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;
 - (5) 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
 - (6) If the premium or insurance charge is financed, it will be subject to finance charges at the rate applicable to the credit transaction.
- B. The disclosures required in Subsection A shall be provided in the following manner:

- (1) In connection with credit personal property insurance offered contemporaneously with the extension of credit or offered through direct mail advertisements, disclosure shall be made in writing and presented to the consumer in a clear and conspicuous manner; and
 - (2) In conjunction with the offer of credit insurance subsequent to the extension of credit by other than direct mail advertisements, disclosure may be provided orally or electronically so long as written disclosures are provided to the debtor no later than the earlier of:
 - (a) Ten (10) days after the election, or
 - (b) The date any other written material is provided to the debtor.
- C. 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 within ten (10) 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.”
- D. All credit personal property insurance shall be evidenced by an individual policy or a certificate of insurance that shall be delivered to the debtor.
- E. The individual policy or certificate of insurance shall, in addition to other requirements of law, set forth the following:
- (1) The name and home office address of the insurer;
 - (2) 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;
 - (3) The premium or amount of payment by the debtor, except that for open-end loans, the premium rate and balance to which the rate applies shall be specified;
 - (4) A full description of the coverage or coverages including the amount and term thereof, and any exceptions, limitations, and exclusions;
 - (5) 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;

- (6) 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.
- (7) Policies issued to cover open-end consumer transactions 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.”

- F.
 - (1) Except as provided in Paragraph (2), the individual policy or group certificate shall be delivered to the debtor upon acceptance of the insurance by the insurer.
 - (2) 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 deemed to be delivered or the election to purchase insurance is made if the delivery occurs within thirty (30) days of the date the insurance is requested by the debtor.

Section 6. Filing, Approval and Withdrawal of Forms

- A. 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 before being used. No policy, certificate of insurance, nor any application, endorsement or rider, shall be issued until the expiration of thirty (30) days after it has been filed, unless the commissioner shall have given prior written approval.
- B. The commissioner shall within thirty (30) days after the filing of a form or rate disapprove a form or rate if the benefits provided are not reasonable in relation to the premium charged, or if it contains provisions that are unjust, unfair, inequitable, misleading, deceptive or encourage misrepresentation of the coverage, or are contrary to any provision of the Insurance Code or of any regulation promulgated thereunder. If the commissioner does not disapprove a filing within thirty (30) days, it shall be deemed approved.
- C. If the commissioner notifies the insurer that the form is disapproved, it is unlawful for the insurer to issue or use the form. The commissioner shall specify the reason for disapproval and state that a hearing will be granted within twenty (20) days after request in writing by the insurer. No policy, certificate of insurance, notice of proposed insurance, nor any application, endorsement or rider, shall be issued until the expiration of thirty (30) days after it has been filed, unless the commissioner shall have given prior written approval.

- D. The commissioner may, at any time after a hearing held not less than twenty (20) days after written notice to the insurer, withdraw approval of any form or rate on any ground set forth in Subsection B. The written notice of hearing shall state the reason for the proposed withdrawal.
- E. An insurer shall not issue forms or use them after the effective date of withdrawal.

Section 7. Reasonableness of Benefits in Relation to Premium Charge

- A. 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 6. 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 as then on file with the commissioner.
- B. 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 (60%) or such higher 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.
- C. 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.

Section 8. Limitation on Creditor Compensation [Optional]

An insurer shall not pay compensation in excess of [insert amount] percent of premium to a creditor. A reasonable level of creditor compensation may be lower than this limitation and this reasonable level shall be justified in determining the reasonableness of benefits pursuant to Section 7.

Section 9. Experience Reports and Triennial Filing Requirements

- A. 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.
- B. Rates that have been filed and approved pursuant to Section 6 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.

Section 10. Cancellation and Refund of Unearned Premium

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 \$[insert amount] are required.

Section 11. Claims

- A. 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.
- B. 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.
- C. No plan or arrangement shall be used whereby any person, firm or corporation other than the insurer or its designated claim representative shall be authorized to settle or adjust claims. The creditor shall 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.
- D. No claim may be denied because the debtor was ineligible for coverage later than ninety (90) 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 (90) days of 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.
- E. All claims for credit personal property insurance shall be subject to Section [insert reference to the Unfair Claims Settlement Practices Act].

Drafting Note: In the event enforcement is addressed on a global basis in other statutes, the following section should be omitted.

Section 12. Enforcement

- A. The commissioner may conduct investigations or examinations of insurers and producers to ensure compliance with and enforcement of the provisions of this Act.
- B. The commissioner may take any of the following actions when necessary or appropriate to enforce the provisions of this Act and any regulations promulgated under this Act:
 - (1) Upon finding that an insurer or producer has violated a provision of this Act or a regulation promulgated under this Act, the commissioner may issue an order directing that the insurer or producer cease and desist from committing the violations, impose a civil penalty for the violations, provide an equitable remedy for past violations, or any combination of these.

- (2) Upon the issuance of an order pursuant to Paragraph (1) of this subsection, the insurer or producer shall have the right to request a hearing. At the hearing, the burden shall be on the insurer or producer to show cause why an order pursuant to this subsection should be annulled, modified or confirmed. The provisions of [insert citation of statute concerning the conduct of hearing before the commissioner] shall apply to all hearings.
- (3) Pending the hearing and the decision by the commissioner, the commissioner shall suspend the effective date of the order.
- (4) Not more than sixty (60) days following completion of the hearing, the commissioner shall enter an order of final determination which shall specify all relevant findings of fact, conclusions of law and orders.
- (5) With the agreement of each affected insurer or producer, and in lieu of a hearing, the commissioner may enter into a consent agreement disposing of the matters that would be the subject of the hearing and order.
- (6) The commissioner may bring an action in [insert court] Court for an injunction or other appropriate relief to enjoin threatened or existing violations of this Act, the commissioner's orders or regulations. An action filed under this paragraph may also seek restitution on behalf of persons aggrieved by a violation of this Act or orders or regulations of the commissioner.

Section 13. Regulations

The commissioner may, after notice and hearing, promulgate reasonable regulations and orders to carry out and effectuate the provisions of this Act.

Section 14. Judicial Review

- A. A person subject to an order or final determination of the commissioner under Section 6 or Section 12 may obtain a review of the order or final determination by filing in the [insert date] Court of [insert county] County, within [insert number] days from the date of the service of the order, a written petition praying that the order of the commissioner be set aside. A copy of the petition shall be served upon the commissioner, and the commissioner shall certify and file in the court a transcript of the entire record in the proceeding, including all the evidence taken and the report and order or final determination of the commissioner. Upon filing of the petition and transcript, the court shall have jurisdiction of the proceeding and of the questions determined, shall determine whether the filing of the petition shall operate as a stay of the order or final determination of the commissioner, and shall have power to make and enter upon the pleadings, evidence and proceedings set forth in the transcript a decree modifying, affirming or reversing the order or final determination of the commissioner, in whole or in part. The findings of the commissioner as to the facts, if supported by [insert type] evidence, shall be conclusive.

Drafting Note: Insert appropriate language to accommodate to local procedure the effect given the commissioner's determination.

- B. To the extent that the order or final determination of the commissioner is affirmed, the court shall issue its own order commanding obedience to the terms of the order or final determination of the commissioner. If either party applies to the court for leave to adduce additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the commissioner, the court may order the additional evidence to be taken before the commissioner and to be adduced upon the hearing in the manner and upon the terms and conditions the court may deem proper. The commissioner may modify the findings of fact, or make new findings by reason of the additional evidence so taken, and shall file such modified or new findings that are supported by [insert type] evidence with a recommendation, if any, for the modification or setting aside of the original order or final determination, with the return of the additional evidence.

Drafting Note: Insert appropriate language to accommodate to local procedure the effect given the commissioner's determination. In a state where final judgement, order or final determination or decree would not be subject to review by an appellate court, provision therefor should be inserted here.

- C. An order issued by the commissioner under Section 12 shall become final:
- (1) Upon the expiration of the time allowed for filing a petition for review if no petition had been duly filed within that time; except that the commissioner may thereafter modify or set aside the order to the extent provided in Section 12; or
 - (2) Upon the final decision of the court if the court directs that the order of the commissioner be affirmed or the petition for the review dismissed.
- D. No order of the commissioner under this Act or order of a court to enforce the same shall relieve or absolve any person affected by the order from liability under any other laws of this state.

Drafting Note: In the event penalties are addressed on a global basis in other statutes, the following section should be omitted.

Section 15. Penalties

An insurer that violates an order of the commissioner while the order is in effect, may after notice and hearing and upon order of the commissioner, be subject at the discretion of the commissioner to either or both of the following:

- A. Payment of a monetary penalty of not more than \$1,000 for each violation, but not to exceed an aggregate penalty of \$100,000, unless the violation was committed flagrantly in a conscious disregard of this Act, in which case the penalty shall not be more than \$25,000 for each violation not to exceed an aggregate penalty of \$250,000; or
- B. Suspension or revocation of the insurer's license.

Section 16. Severability

If any provision of this Act, or the application of the provision to any person or circumstance, shall be held invalid, the remainder of this Act, and the application of the provision to any person or circumstance other than those as to which it is held invalid, shall not be affected.

Section 17. Effective Date

This Act shall take effect [insert effective date].

Chronological Summary of Action (all references are to the Proceedings of the NAIC).

2001 Proc. 1st Quarter 16-17, 279, 300, 302-309 (adopted).

2002 Proc. 4th Quarter 32-33, 524, 768 (amended).