



IRVIN D. PARKER
ADMINISTRATOR

The State of South Carolina

Department of Consumer Affairs

600 COLUMBIA BUILDING
P. O. BOX 11739
COLUMBIA, S. C. 29211
(803) 758-2040

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Administrative Interpretation No. 4.107-7612

CREDIT A&H RATE SCHEDULE WHICH HAS NOT BEEN FILED AND APPROVED AS REQUIRED PRODUCES "EXCESS CHARGE" WHEN USED BY SUPERVISED LENDER.

QUESTION: What rate of charge and what retroactive period may a supervised lender contract for with respect to a sale of credit accident and health insurance?

The applicable law is found in Article 4 of the South Carolina Consumer Protection Code (Act 1241 of 1974) (as amended), hereinafter called the Code.

Section 4.104(2) of the Code provides that:

The excess amount of a charge for insurance provided for in agreements in violation of this Article is an excess charge for the purposes of the provisions of the Article on Remedies and Penalties (Article 5)....

Section 4.107(1) provides that such a charge:

... may not exceed the amount to be charged by the insurer ... conforming to any rate filings required by law ... made by the insurer with the Insurance Commissioner. (Emphasis added)

Section 4.203 provides that:

... a creditor may not use a form or schedule unless

- (a) the form or schedule has been on file with the Insurance Commissioner for thirty days, or has earlier been approved by him; and
- (b) the insurer has complied with this section with respect to the insurance. (Emphasis added)

Compliance "with this section" requires that:

... all policies, certificates of insurance, notices of proposed insurance, applications for insurance, endorsements and riders relating to consumer credit insurance, other than life insurance, delivered or issued for delivery in this State, and the schedule of premium rates or charges pertaining thereto, shall be filed by the Insurer with the Insurance Commissioner Sub-section (2) of Section 4.203. (Emphasis added)

Unlike Act 988, the Code does not specify what retroactivity feature may be used. This is not an oversight. Insurers are deliberately freed to make any offering with respect to A&H insurance. The Commissioner of Insurance has the responsibility to review any such offering and disapprove any form containing "provisions which are unjust, unfair, inequitable or deceptive or encourage misrepresentation of the coverage, etc." And he shall disapprove any rate schedule which is "unreasonable in relation to benefits provided under the form." Moreover, in determining whether to approve an insurer's offering the Commissioner must assure that his premium rate schedule is "calculated to produce and maintain a ratio of losses incurred, or reasonably expected to be incurred, to premiums earned or reasonably expected to be earned, of approximately fifty per cent."

Under the Code, therefore, the insurer may offer a three day or a thirty day or any other retroactive period, so long as the provision is not determined to be "unjust, unfair, inequitable or deceptive, or encourage misrepresentation of the coverage" The period selected, however, will have a direct bearing upon the premium rate which may be approved by the Commissioner. This is because the rate must be reasonable "with relation to the benefits provided" and the insurer's loss/premium ratio must in any event be "approximately fifty per cent."

Based upon the foregoing it is the opinion of this office that a supervised lender may contract for an A&H insurance premium not in excess of the amount charged by the insurer in conformity with a form and schedule filed by the insurer as required by Section 4.203 of the Code. Conversely, such a charge which exceeds the amount charged by the insurer and a charge which has not been filed and approved as provided in that Section is an "excess charge."


Irvin D. Parker
Administrator