

**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 adopts amendments to 28 TAC §3.6011, adopting a revised *Consumer Bill of Rights for Credit Life, Credit Disability, and Credit Involuntary Unemployment Insurance* (Consumer Bill of Rights) that insurers must provide to each insured with a new policy or renewal notice. The amendments are adopted with nonsubstantive changes in response to comments to the proposed text published in the *Texas Register* (38 TexReg 283) on January 18, 2013.

2. REASONED JUSTIFICATION. 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 November 16, 2012, amendments to §3.6011 were adopted that included a revised Consumer Bill of Rights. Additional amendments were proposed to §3.6011 to address an apparent statutory conflict between the Insurance and Finance Codes in the revised Consumer Bill of Rights No. 6.

3. HOW THE SECTION WILL FUNCTION.

Section 3.6011(a) adopts the revised Consumer Bill of Rights, and §3.6011(c) adopts the Spanish version of the revised Consumer Bill of Rights.

Section 3.6011(e) provides that the effective date of compliance with this rule is November 5, 2013.

4. SUMMARY OF COMMENTS AND DEPARTMENT RESPONSE.

Comment: A commenter stated that the bill of rights adopted in 1993 adequately advises consumers of their rights. The commenter also stated that the proposed Consumer Bill of Rights and the previously adopted bill of rights are flawed, and the commenter has no recollection of receiving any consumer complaints about the 1993 version.

Response: The department will proceed with adopting the proposed Consumer Bill of Rights with the changes outlined in this adoption. As stated in the introduction, a revised Consumer Bill of Rights has been adopted because OPIC petitioned the department for rulemaking to adopt an update to the bill of rights for credit insurance. The updated Consumer Bill of Rights includes privacy rights that were not contained in the 1993 version, and it is more concise and readable than earlier versions.

Comment: A commenter stated that insurers would prefer a shorter two-page bill of rights that refers consumers to a website for more detailed information. Additionally, the commenter states that the industry expects the Consumer Financial Protection Bureau to adopt required federal disclosures for credit insurance products.

Response: The department did not make changes in response to this comment. The adopted Consumer Bill of Rights includes three additional rights and is the same length

as the version it is replacing. As addressed in response to another comment, the department does not interpret this rule or the underlying statutes as forbidding an insurer from providing the Consumer Bill of Rights electronically, as long as the regulated entity is in compliance with the statutes and rules for electronic transactions. However, the department does not agree that referring consumers to an electronic link satisfies the requirement to provide each insured with the Consumer Bill of Rights. Although the Consumer Financial Protection Bureau may require disclosures for credit insurance products, there is no timetable for when those federal regulations may be adopted, so the department is proceeding with adopting the Consumer Bill of Rights.

Comment: A commenter disagreed with the department's finding of no fiscal impact on state government. The commenter stated that adopting this amendment will force industry to move from credit insurance products to debt cancellation products, which will reduce premium tax revenue. As an example, the commenter identifies the automotive industry's movement from Guaranteed Auto Protection insurance to waiver of debt cancellation products.

Response: The department did not make changes in response to this comment. The department disagrees that this adoption will have any impact on industry's choice between the two products. The commenter did not provide documentation to support the assertion about the automotive industry, nor was there any evidence provided suggesting that if, in fact, the trend exists, it is due to requirements related to providing consumers a bill of rights and not due to other market and industry factors.

Comment: A commenter stated "loan" should be replaced with "debt" throughout the Consumer Bill of Rights because the term "loan," as defined in the Finance Code, does

not include retail installment transactions. Because credit insurance is authorized by statute to be offered in connection with retail installment transactions, it should be included in the terminology of the Consumer Bill of Rights.

Response: The department agrees and has replaced two of the five occurrences of “loan” in the Consumer Bill of Rights with “debt,” more specifically in Right Nos. 11 and 12. In Right No. 2, “loan process” was replaced with “transaction” and in Right Nos. 3 and 10 it was deleted due to other revisions.

Comment: Commenters requested that the department allow insurers to satisfy their requirement to provide the Consumer Bill of Rights to each insured by referencing it on their website. In support of this request the commenter states that this would reduce compliance costs for insurers now and in the future and would assist the insureds by having an immediate source to reference the document before, during, or after the term of the covered transaction.

Response: The department disagrees that the requirement in §3.6011 would be satisfied by referencing an electronic link. However, the department believes it would be possible to satisfy the notice provision by providing the Consumer Bill of Rights electronically if an insurer has a procedure in place to conduct business electronically in compliance with Insurance Code §35.003 and any applicable rules.

Comment: Commenters stated that insurers should be provided additional time to comply with this amended rule so that they may deplete their stock of the prior bill of rights, work with platform providers to reprogram delivery systems, and implement the amended rule in the field. Commenters suggest an effective date of six to nine months from adoption.

Response: The department disagrees that six to nine months is required for compliance because industry has been on notice of this revision process since July 6, 2012. Further, the department questions the complexity of necessary changes in systems, programming, and implementation since the terms of compliance remain the same except for the actual document or electronic file changes. In an effort to provide ample time to comply and to mitigate costs associated with compliance, the date set forth in §3.6011(e) will be extended to November 5, 2013.

Comment: A commenter stated that the last part of the first sentence, “[the bill of rights] does not become part of your policy,” should be bolded.

Response: The department disagrees that the phrase needs to be emphasized because bolding that part would detract from other parts of the introduction. Further, the department has no evidence that consumers confuse the Consumer Bill of Rights as part of their policy.

Comment: A commenter stated that the sentence, “[m]any people do not file credit insurance claims because they forget they have coverage,” was not included in other lines of insurance bill of rights and is not supported by any evidence.

Response: The department agrees that the sentence does not constitute notice of a consumer right and has removed the sentence.

Comment: A commenter stated the current phrasing of Right No. 1, which states, “[a] creditor must provide a written statement describing any insurance you must provide in order to receive credit,” needs to be restated to clarify the “true purpose of the right.”

The commenter suggested the following revision: “[i]f credit insurance is required by the

creditor to obtain the debt, the creditor must provide you a written statement that it is required.” Another commenter stated that Right Nos. 1 and 2 should be combined.

Response: The department agrees that the commenter’s suggestion will clarify the right and has made that change. The department declines to combine Right Nos. 1 and 2 because although both rights address the purchase of credit insurance, each right addresses different types of notices the consumer should receive from the creditor.

Comment: Commenters stated Right No. 2 is incorrect and misleading because credit insurance is tied to a particular debt. Commenters also stated that the right conflicts with Finance Code §§345.205 and 348.206, which allow a debtor 10 days after the close of the transaction to provide an equivalent policy in lieu of purchasing credit insurance for that particular transaction.

Response: The department agrees with commenters that the right should not state that the debtor may provide another credit insurance policy. Instead, it should state that another insurance policy may be provided to satisfy the creditor’s requirement. Therefore, “credit” has been removed in reference to the debtor’s right to obtain insurance from other sources and in regard to providing an existing policy. The department disagrees that this right, which is based on 28 TAC §3.5101 and Insurance Code §1153.161, conflicts with the referenced Finance Code sections. Insurance Code §1153.161 provides consumers with the right to satisfy a creditor’s requirement for additional security by using an existing insurance policy or obtaining a policy from another insurer authorized to engage in the business of insurance in this state. 28 TAC §3.5101 requires creditors to notify consumers of the right provided by Insurance Code §1153.161 prior to the close of the transaction so the right is meaningful and the

consumer has a real opportunity to make a choice. The referenced Finance Code sections require the creditor to allow the consumer 10 days to provide an alternate policy. Providing a consumer a notice of an option is different and distinct from the time the consumer is allowed to provide the alternative security, so this right does not conflict with the Finance Code.

Comment: Commenters stated that Right No. 3 is impossible to comply with when the credit insurance is for a revolving account because the total cost will change based on the outstanding balance. Commenters also stated that the right may mislead consumers to believe the amount provided includes other fees and interest related to financing of the premium. The commenters made various suggested revisions to address these concerns.

Response: The department agrees that this right should be revised to add clarity. The phrase containing “total cost” has been removed and language tracking Insurance Code §1153.159(2)(C) has been inserted. Right No. 3 now states, in pertinent part, “[y]our application and policy must separately include the amount of the premium or total identifiable charge, if any, to be paid by the debtor for credit insurance and the amount, term, and description of the coverage provided....” The department disagrees that it is impossible to provide a consumer notice of the premium for credit insurance on a revolving account. Although the premium may change month to month based on the amount outstanding, the insurer should be able to provide the consumer the monthly rate that will be applied depending on the financed amount.

Comment: Commenters stated that Right No. 6 may be confusing to consumers because the consumer does not see the insurer “charging” the creditor. Instead, the

consumer is provided the insurance premium, on a form approved by the department, that will be billed by the creditor. Commenters included several suggested revisions.

Response: The department agrees that this right may be confusing. The right has been revised to state, “[a] creditor cannot charge you a higher premium for credit insurance than what the insurer charges for that coverage but may include the premium for the credit insurance in your debt amount with a finance charge, subject to the Finance Code.”

Comment: A commenter stated that Right Nos. 8 and 9 should be combined. The commenter also stated that Right No. 8 should be revised to address the difference between open- and closed-end transactions by qualifying that the right only applies to open-end transactions.

Response: The department declines to make either suggested change. Right Nos. 8 and 9 should not be combined into one right because each addresses a distinct and different circumstance when a notice is required. Although not all transactions are subject to rate or insurer change during the term of the debt as described in Right No. 8, the statement is already qualified by “[i]f your rate changes.” Further, the intent of the Consumer Bill of Rights is to explain a consumer’s rights, to the extent possible, without using technical terminology that may result in a longer and less consumer-friendly bill of rights.

Comment: A commenter stated Right No. 10 may confuse those consumers that are required to have credit insurance. The commenter suggests the following revision to the first sentence, “Unless the credit insurance is required by the creditor, you can cancel your credit insurance policy at any time.”

Response: The department agrees and has made the suggested revision.

Comment: Commenters stated Right No. 11 is inaccurate in regard to financed premiums and settlement due to or during claim settlement. Additionally, commenters stated that creditors and insurers may be confused about the de minimus amount when a refund is no longer required because some transactions under the Finance Code require a refund unless the amount is less than \$1, but the Insurance Code requires a refund of unearned credit insurance premiums unless the amount is less than \$3. A commenter also stated that the use of the phrase “an accounting” is incorrect because an accounting is not required by statute; and if the reference remains, there should be clarity in regard to who is responsible for providing the accounting because that requirement would be time consuming and costly to industry.

Response: The department agrees, in part, that this right could be stated more clearly. The right has been revised, as one commenter suggested, to state, “If your debt is paid off early, you may be entitled to a refund or credit of the unearned premiums. Please read your policy for more information regarding refunds.” The department notes that neither the creditor nor insurer is responsible to provide a debtor an accounting of unearned premiums.

Comment: Commenters stated that the language in Right No. 12 may confuse consumers when the unearned premium is credited to the underlying debt. Commenters suggested various revisions.

Response: In an effort to avoid any confusion Right No. 12 has been revised to read as follows: “[y]our creditor has 60 days to tell your insurance company that you have paid off your debt. They must give the insurance company your name, address, and the

date your debt was paid off so that any unearned premiums may be credited to your account or refunded to you.”

Comment: A commenter stated that the reference to arson in Right No. 17 should be deleted because it does not apply to credit insurance claims.

Response: The department agrees and has revised this right by deleting the reference to arson.

Comment: A commenter stated that Right No. 19 limits an insurer’s basis to deny a claim due to a misrepresentation related to the insured risk because the right states, “...material, or contributed, to the cause of the loss.” Further, the commenter states that the right is attempting to amend the Administrative Code without legislation and that it conflicts with 28 TAC §3.5106(a)(2)(D).

Response: The department disagrees that Right No. 19 limits an insurer’s right to deny a claim based on a misstatement related to the insured risk, because any misstatement related to the risk would likely be material to the insurance contract. However, for clarity the right has been revised to insert “to your risk” after “material” and remove the two commas that follow. The department disagrees that Right No. 19 conflicts with 28 TAC §3.5106(a)(2)(D) or Insurance Code §§705.004 and 705.051, because the right does not limit an insurer’s right to include additional provisions or statements in an application, policy, or certificate that fraudulent statements or misrepresentations that are material or contributory to the cause of the policy becoming payable are contestable beyond the two year period. Right No. 19 does not limit an insurer’s requirement to fully comply with 28 TAC §3.5106(a)(2)(D).

Comment: A commenter requested a new right stating that credit insurance may be purchased for less than the amount needed to extinguish the indebtedness.

Response: The department disagrees that a new right is necessary. Because the goal of the bill of rights is to provide consumers general, understandable, and useful information, it is not possible to include rights to cover every circumstance a consumer may encounter with credit insurance. Because the Right No. 3 explicitly requires the coverage amount to be provided to the consumer, the department believes at that time the consumer will be aware of the difference in coverage and debt.

Comment: A commenter requested a new right in response to Right No. 22, which addresses a consumer's right to sue his or her insurer, that states the potential penalties for committing insurance fraud.

Response: The department disagrees that a new right is necessary. The topic of insurance fraud is not squarely within the scope of the Consumer Bill of Rights. One of the goals of the Consumer Bill of Rights is to provide a concise statement of those rights and, to that end, not all peripheral issues can be included. The department notes, however, that insurers may include a statement to applicants warning them about the potential penalties of insurance fraud to raise these consumers' awareness of the seriousness of insurance fraud.

5. NAMES OF THOSE COMMENTING FOR AND AGAINST THE PROPOSAL.

For, with changes: American Financial Services Association, American National Insurance Company, Consumer Credit Industry Association, Office of Consumer Credit Commissioner, Old United Insurance Companies, and Texas Association of Life and Health Insurers. American National Insurance Company, Consumer Credit Industry

Association, and Chase submitted untimely comments that were for the adoption with changes. The suggested changes are addressed in the section of comments and responses.

6. STATUTORY AUTHORITY. The amendments are adopted under Insurance Code §501.156 and §36.001. Section 501.156 requires OPIC to submit to 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.

7. 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 the Consumer Bill of Rights for Credit Life, Credit Disability, and Credit Involuntary Unemployment Insurance. 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*. *The Consumer Bill of Rights for Credit Life, Credit Disability,*

and Credit Involuntary Unemployment Insurance 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) Insurers may reproduce the Consumer Bill of Rights for Credit Life, Credit Disability, and Credit Involuntary Unemployment Insurance for the distribution required by subsection (a) of this section. Alternatively, insurers may generate it on their own equipment. If the Consumer Bill of Rights for Credit Life, Credit Disability, and Credit Involuntary Unemployment Insurance is generated by the insurers, it must appear in no less than 10-point font and be on separate pages with no other text on those pages.

(c) The commissioner adopts the Spanish language version of the *Consumer Bill of Rights for Credit Life, Credit Disability, and Credit Involuntary Unemployment Insurance*. 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 insurer.

Figure: 28 TAC §3.6011(c).

(d) Insurers may reproduce the Spanish language version of the Consumer Bill of Rights for the distribution required by subsection (c) of this section. Alternatively, insurers may generate the form on their own equipment. If the form is generated by the insurers, it must appear in no less than 10 point font and be on separate pages with no other text on those pages.

(e) This section applies to all credit life, credit disability, and credit involuntary unemployment insurance policies offered, issued, renewed, or delivered after November 5, 2013.

CERTIFICATION. This department certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Issued at Austin, Texas, on July 8, 2013.



Sara Waitt, General Counsel
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The commissioner adopts amendments to §3.6011.



Julia Rathgeber
Commissioner of Insurance

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