



South Carolina Department of Insurance

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BULLETIN NUMBER 2004 – 13 (ISSUED UPON NOVEMBER 10, 2004)

To: All Licensed Property and Casualty Insurers
All Premium Service Companies

From: South Carolina Department of Insurance
Office of Individual Licensing, Education

Subject: Premium Service Companies – New Statutory Changes

I. PURPOSE OF BULLETIN

During the 2004 legislative session of the South Carolina General Assembly, several significant changes were made to Chapter 39 of Title 38. See 2004 S.C. Act No. 286. Specifically, §§ 38-39-70, 38-39-80, 38-39-90 were modified. The purpose of this bulletin is to describe the changes, the impact each change will have on the financing of insurance premiums in the state of South Carolina, and highlight any additional form requirements.

The effective date of these changes was July 6, 2004. Changes requiring a filing with the South Carolina Department of Insurance (Department) will not become effective until the filing has been reviewed and approved by the Department. **Rates applicable to charges by premium service companies not specifically stated in Chapter 39 of Title 38 have been promulgated by the Department based on a maximum rate schedule. Individual premium service companies desiring to adopt the Department's promulgated rates must submit a maximum rate form (Form SC 1000) to the Department for approval. Individual premium service companies desiring to adopt a higher rate than those promulgated by the Department must submit a filing to the Department outlining justification of the request for a higher rate. For simplification purposes, a premium service company may want to adopt the Department's promulgated rates until such time as they are able to provide justification of a higher rate or fee.**

Outlined below is a summary of the more significant changes to this chapter.

II. SECTION-BY-SECTION SUMMARY

SECTION 1.

A. Section 38-39-70. Premium Service Agreements.

Several amendments were made to § 38-39-70. What follows is a summary of each sub-section:

1. Section 38-39-70(a)(3): Subsection (a) (3) is self-explanatory and involves language changes. For example, “agent” changed to “agency” and “broker” to “brokerage company.” This language is less restrictive and clarifies that the name of the individual producer or broker is *not* required. The change from “insurance contracts” to “contracts” along with the new language in (c) of this section clarifies that contracts other than insurance along with other non-premium amounts may be included in the amount financed.

Action Required: This requirement can be met by premium service companies filing a new premium service agreement containing the new language outlined in the statute. Insurers and premium service companies should familiarize themselves with these changes to avoid unnecessary delay in obtaining approval of their premium service agreements and inconveniences to the policyholder.

2. Section 38-39-70(c): Subsection (c) now includes automobile related services such as towing and rental contracts, emergency road service contracts and auto club contracts may also be included in the premium service company pay plan. In addition, there is no longer a minimum down payment required.

Action Required: Insurers and premium service companies should familiarize themselves with these changes to avoid unnecessary delays and inconveniences to the policyholder.

3. Section 38-30-970(d): Subsection (d) provides that the execution of a new premium service agreement is *not* required on the financing of renewals or additional premiums. Thus, a new signature is not required.

Action Required: The original executed premium service agreement must have been approved by the Department. The original executed (signed) premium service agreement must include language or terms, which allow the original agreement to apply to renewals and an addendum or revision. Upon renewal, however, a premium service company must provide an addendum (notice of premium financing or financing statement), which specifically includes information required under section (a) 4. A copy of the addendum and revision notice must be filed and approved by the Department. The insured must sign the initial premium service agreement notice indicating that the fee(s) have been disclosed to him. The addendum must include: the total amount of the premium to be charged, the amount of the down payment, the principal balance, the amount of the service charge, the balance payable by the insured and the number of installments required, the amount of each installment and the due date for each.

4. Section 38-39-70(e) Subsection (e) provides for the first time licensed insurance producers or brokers may charge a \$5 administrative fee for originating the initial premium service agreement. No other fees are permitted to be collected by the producer or broker. While the fee must be disclosed on the premium service agreement, it is not to be considered a charge imposed by a premium service company or insurer.

Action Required: Producers who have an ownership interest in the premium service company to which payments are being made are precluded from charging such an administrative fee for originating the premium service agreement. Appropriate changes or charges to the premium service agreement must be filed and approved by the Department before such charges can be collected.

B. SECTION 2.

Section 38-39-80. Premium service companies may not write insurance or sell other services or commodities; service charges.

4. Section 38-39-80(c and e): The changes under subsection (c) provides that two methods of computing the service charge with the greater of the two allowable as the service charge on personal lines premium financing. The two methods are: (1) the traditional method, which equals to 1% of the amount financed times the number of installments, and (2) a fixed dollar amount times the number of installments.

Action Required: Until such time as a filing has been made by the premium service company and approved by the Department, a premium service company may only use

method one (1) to complete the premium service agreement. Such filing by each premium service company submitting individual requests should include statistics compiled within three-years of the filing request date relating to profit and loss statistics for each rate item charged, expense statistics for each rate item charged, and any information related to cost analysis for each rate item charged. Rate item includes fixed dollar interest rate method, late charge, cancellation charge, and convenience fee charge.

2. Section 38-39-80(d): Subsection (d) provides that a non-refundable initial charge now may be charged in any amount up to \$20 on each premium service agreement, addendum and revision of the premium service agreement by the premium service company. The initial charge is permitted on renewals and each additional premium financing addendum as well as revisions to the original agreement.

Action Required: For purposes of this section, revisions mean material changes to the terms and conditions of the premium service agreement such as changes in interest rate, payment amount, service charge, down payment, the balance payable, number and amount of installments, etc. It does not include nonmaterial items such as changes in the name and address of the policyholder. The premium service company is required to file with the Department the amount charged. This amount cannot exceed \$20. Additionally, a service fee greater than \$15 cannot be charged or collected until the premium service agreement has been submitted and approved by the Department.

3. Section 38-39-80(e): The changes under subsection (e) allow for two methods of computing the service charge with the greater of the two allowable as the service charge on personal lines premium financing. The two methods are: (1) the traditional method which equals to 1% of the amount financed times the number of installments, or (2) a fixed dollar amount times the number of installments based on the premium finance company filing.

Action Required: See Section 38-39-80, subsection (c)

4. Section 38-39-80(g): Subsection (g) provides that the late charge is an amount filed with the department, and may be applied after one or more days of default.

Action Required: Prior statutory requirements regarding loans in default states that a premium service agreement may provide for the payment by the insured of a delinquency charge on each installment in default for a period of not less than five days or one dollar to a maximum of five percent of the installment; however, if the loan is primarily for personal family and household purposes the maximum amount of the delinquency charge may not exceed five dollars. Only one delinquency charge may be collected on an installment regardless of the period during which it remains in default. To avoid delay in implementing the new changes, premium service companies must continue to use the \$5 late charge fee until such time as each has received approval from the Department.

5. Change Subsection 38-39-80(h):

Subsection (h) provides that a convenience fee may be charged to accept certain types of payments made through alternative payment mechanisms. This change will allow the premium service companies the opportunity to accept payments made where the premium service company must pay fees to the provider of the alternative payment mechanism such as Visa, Mastercard, American Express, Check-By-Phone, and other alternative payment methods.

Action Required: To be eligible to charge an alternative payment charge, the premium service company must file with the Department, expense information and any other data that supports the request for a charge.

C. SECTION 3.

Section 38-39-90. Cancellation of Insurance Contracts by Premium Service Company.

1. Section 38-39-90(b) Subsection (b) provides that the “10 day notice” may, at the premium service company’s option, now be mailed ten days or less prior to the installment due date or after the due date or after the default date as is the current practice. The notice cannot be mailed more than 10 days prior to the due date.

Action Required: Premium service companies are still required to issue a “notice of cancellation” as required under subsection (c) of this section. No filing is required. **With respect to the effective date of cancellation of the insurance contract, at the request of the premium service company, Regulation 69-10, Section 21 requires, subject to the conditions applied in Section 22 of Regulation 69-10, that the cancellation of such contract shall be the date requested. Those sections of the Regulation 69-10 that addresses this subject are as follows:**

21. “Every insurer, upon receipt of such request for cancellation, shall, subject to Section 22 hereof, cancel such contract as of the date requested and shall within a reasonable time, not more than 30 days, cause the gross return premium, if any, to be computed and paid or credited to, or for, the account of the licensee. A copy of the statement relating to such return premiums shall be furnished by the insurer to the insured.”

22. Where a valid statutory, regulatory or contractual provision requires that notice be given a particular period of time before cancellation shall become effective, the insurer shall not be required to effect cancellation prior to the elapse of the period of time prescribed by such statute, regulation or contract; the running of such time shall commence the second business day following receipt by the insurer of the request for cancellation.”

2. Section 38-39-90(c): In subsection (c), a non-refundable cancellation charge or reinstatement fee is now permitted when a notice of cancellation is effected in accordance with Chapter 39 of Title 38. The policy must be canceled in order for this fee to accrue, and cannot be collected until the policy is canceled and reinstated.

Action Required: Premium service companies must file with the Department the applicable cancellation charge.

3. Section 38-39-90(d): In subsection (d), changes were made in an attempt to resolve issues regarding the exact date of cancellation on premium financed policies in light of the 2002 decision of the S. C. Supreme Court. In that decision, **Auto Now Acceptance Corporation v. Catawba Insurance Company, ___ S.C. ___, 570 S.E. 2d 168 (2002)**, “Other third party” was stricken and replaced with “holders of certificates of insurance” thus creating only three specific instances where statutory, regulatory or contractual restrictions “override” the premium finance cancellation – notice required to a (1) governmental agency, (2) mortgagee or (3) holder of a certificate of insurance. In all other instances (including a loss payee), the premium finance cancellation notice is effective, and, upon receipt of the premium finance cancellation notice by the insurer, the subject insurance policy must be cancelled effective the date of cancellation on the notice of cancellation issued by the premium service company.

Action Required: Insurers and premium service companies should familiarize themselves with these changes to avoid any unnecessary delays and inconveniences to the policyholder.

4. Section 38-39-90(h): Section (h) was added because there have been instances where the insured renewed his/her policy on or before the renewal date by making the down payment to his agent; however, because the insurer received the payment after the expiration date, the insurer refused to accept it and provide coverage. The changes now provides that if the premiums were received by the agent or insurer before the expiration date of the policy, the policy must be renewed without a lapse in coverage upon receipt of the policy premium from the agent or premium service company.

Action Required: Insurers and premium service companies should familiarize themselves with these changes to avoid unnecessary delays and inconveniences to the policyholder.

5. Section 38-39-90(i): Section (i) clarifies that the gross unearned premiums due on cancellations of personal lines insurance contracts effected pursuant to the provisions of this chapter may not be reduced by any amounts due the insurer from a prior policy term or other policies previously or currently in effect.

Action Required: Insurers and premium service companies should familiarize themselves with these changes to avoid unnecessary delays and inconveniences to the policyholder.

Please direct any questions or concerns regarding this matter to Willie Seawright at 803-737-6134.

**SOUTH CAROLINA DEPARTMENT OF INSURANCE
PREMIUM SERVICE COMPANIES
PROMULGATED MAXIMUM RATE SCHEDULE**

Category

Maximum Rate or Fee

1. **Initial Charge** [38-39-80(d)]
 - 1a. Premium Service Agreement Must not exceed \$20 [38-39-80(d)]
 - 1b. Addendum (Additional Financing) Must not exceed \$20 [38-39-80(d)]
 - 1c. Revision (Renewals) Must not exceed \$20 [38-39-80(d)]

2. **Service Charge** [38-39-80 (c) & 38-39-80(e)]

[THIS SECTION IS APPLICABLE TO LOANS FOR PERSONAL, FAMILY OR HOUSEHOLD PURPOSES]

- 2a. Interest Rate Method 1 % of the outstanding balance times
the number of monthly installments
Must not exceed 1% [38-39-80(e)], or
- 2b. Fixed Dollar Amount Method \$ 5 times the number of monthly
installments

3. Late Charge [38-39-80(g)] \$ 5
[APPLICABLE TO LOANS FOR PERSONAL, FAMILY OR HOUSEHOLD PURPOSES]

4. Cancellation Charge [38-39-90(c)] \$ 10

5. Convenience Fee [38-39-80(h)] \$ 2 per transaction