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INSURANCE CODE - INS

DIVISION 1. GENERAL RULES GOVERNING INSURANCE [100 - 1879.8] (*Division 1 enacted by Stats. 1935, Ch. 145.*)

PART 2. THE BUSINESS OF INSURANCE [680 - 1879.8] (*Part 2 enacted by Stats. 1935, Ch. 145.*)

CHAPTER 1. General Regulations [680 - 1113] (*Chapter 1 enacted by Stats. 1935, Ch. 145.*)

ARTICLE 5.9. Credit Life and Disability Insurance [779.1 - 779.36] (*Article 5.9 added by Stats. 1959, Ch. 1667.*)

779.1. The purpose of this article is to promote the public welfare by regulating credit life insurance and credit disability insurance. Nothing in this article is intended to prohibit or discourage reasonable competition.

(Amended by Stats. 1985, Ch. 1316, Sec. 1.)

779.2. All life insurance and all disability insurance sold in connection with loans or other credit transactions shall be subject to the provisions of this article, except (a) such insurance sold in connection with a loan or other credit transaction of more than 10 years duration, and (b) such insurance where its issuance is an isolated transaction on the part of the insurer not related to an agreement or a plan or regular course of conduct for insuring debtors of the creditor. Nothing in this article shall be construed to relieve any person from compliance with any other applicable law of this state, including, but not limited to, Article 6.5 (commencing with Section 790), nor shall anything in this article be construed so as to alter, amend, or otherwise affect existing case law.

For the purpose of this article:

- (1) "Credit life insurance" means insurance on the life of a debtor pursuant to or in connection with a specific loan or other credit transaction, exclusive of any such insurance procured at no expense to the debtor. Insurance shall be deemed procured at no expense to the debtor unless the cost of the credit transaction to the debtor varies depending on whether or not the insurance is procured.
- (2) "Credit disability insurance" means insurance on a debtor to provide indemnity for payments becoming due on a specific loan or other credit transaction while the debtor is disabled as defined in the policy, exclusive of any insurance procured at no expense to the debtor. Insurance shall be deemed to have been procured at no expense to the debtor unless the cost of the credit transaction to the debtor varies depending on whether or not the insurance is procured.
- (3) "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 any such 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 other person in any way associated with any of them.
- (4) "Debtor" means a borrower of money or a purchaser or lessee of goods, services, property, rights or privileges for which payment is arranged through a credit transaction.
- (5) "Indebtedness" means the total amount payable by a debtor to a creditor in connection with a loan or other credit transaction.

(Amended by Stats. 1986, Ch. 1145, Sec. 1.)

779.3. Credit life insurance and credit disability insurance shall be issued only in the following forms:

- (a) Individual policies of life insurance issued to debtors on the term plan;
- (b) Individual policies of disability insurance issued to debtors on a term plan or disability benefit provisions in individual policies of credit life insurance;
- (c) Group policies of life insurance issued to creditors providing insurance upon the lives of debtors on the term plan;

(d) Group policies of disability insurance issued to creditors on a term plan insuring debtors or disability benefit provisions in group credit life insurance policies to provide such coverage.

(Added by Stats. 1959, Ch. 1667.)

779.4. (a) The amount of credit life insurance and credit disability insurance shall not exceed, but, except as provided in subdivision (b), may be less than, the following:

(1) Credit Life Insurance. The initial amount of credit life insurance shall at no time exceed the unpaid amount financed plus earned interest. Where an indebtedness is repayable in substantially equal installments, the amount of insurance shall at no time exceed the greater of the scheduled or the actual unpaid amount financed plus earned interest. In the case of revolving loan or revolving charge accounts the insurance shall not at any time exceed the unpaid amount financed plus earned interest.

Notwithstanding the provisions of the above paragraph, the amount of insurance on agricultural or horticultural loan commitments may be equal to the amount of the loan commitment.

(2) Credit Disability Insurance. The total amount of periodic indemnity payable by credit disability insurance in the event of disability, as defined in the policy, shall not exceed the aggregate of the periodic scheduled unpaid installments of indebtedness, and the amount of each periodic indemnity shall not exceed the original indebtedness divided by the number of periodic installments.

(b) The amount of credit life and credit disability insurance may be less than the amounts specified in subdivision (a) except as provided by subdivision (a) of Section 18291, subdivision (e) of Section 22458.1, or subdivision (e) of Section 24458.1 of the Financial Code, or by any other provision of law specifically prohibiting credit life or credit disability insurance in some lesser amount.

(Amended by Stats. 1992, Ch. 32, Sec. 1. Effective January 1, 1993.)

779.5. The term of any credit life insurance or credit disability insurance shall, subject to acceptance by the insurer, commence on the date when the debtor becomes obligated to the creditor or the date the debtor applies for such insurance, whichever is later, except that, where a group policy provides coverage with respect to existing obligations, the insurance on a debtor with respect to such indebtedness shall commence on the effective date of the policy. Where evidence of insurability is required and such evidence is furnished more than thirty (30) days after the date when the debtor becomes obligated to the creditor, the term of the insurance may commence on the date on which the insurance company determines the evidence to be satisfactory, and in such event there shall be an appropriate refund or adjustment of any charge to the debtor for insurance. The term of such insurance shall not extend more than 15 days beyond the scheduled maturity date of the indebtedness except when extended without additional cost to the debtor. If the indebtedness is discharged due to renewal or refinancing prior to the scheduled maturity date, the insurance in force shall be terminated before any new insurance may be issued in connection with the renewed or refinanced indebtedness. In all cases of termination prior to scheduled maturity, a refund shall be paid or credited as provided in Section 779.14.

(Amended by Stats. 1961, Ch. 1947.)

779.6. Notwithstanding the provisions of Section 10203.5, all credit life insurance and credit disability insurance subject to this article shall be evidenced by an individual policy, or in the case of group insurance by a certificate of insurance, which individual policy or group certificate of insurance shall be delivered to the debtor.

Each individual policy or group certificate of credit life insurance or of credit disability insurance or any combination thereof shall, in addition to other requirements of law, set forth the name and home office address of the insurer, the identity by name or otherwise of the person or persons insured the premium or amount of payment, if any, by the debtor separately for credit life insurance and credit disability insurance, a description of the coverage including the amount and term thereof, and any exceptions, limitations or restrictions, and shall state that the benefits shall be paid to the creditor holding the indebtedness to reduce or extinguish the unpaid indebtedness and, wherever the amount of insurance may exceed the unpaid indebtedness, that any such excess shall be payable to a beneficiary, other than the creditor, named by the debtor or to his estate. Said individual policy or group certificate of insurance shall be delivered to the insured debtor at the time the insurance commences except as hereinafter provided.

Notwithstanding the provisions of the above paragraph, a certificate issued under a group policy in cases where the debtor obligates himself to pay the insurance premium or payment periodically with the debt payments on the decreasing amount of the insurance or where the indebtedness is a revolving loan or revolving charge account the rate of insurance premium or payment per unit of coverage may be set forth in lieu of "the premium or amount of payment, if any, by the debtor".

(Amended by Stats. 1963, Ch. 1836.)

779.7. If a creditor requires a debtor to make any payment for credit life insurance or credit disability insurance, and an individual policy or group certificate of insurance is not delivered to the debtor at the time the insurance commences, a copy of the application for such policy or a notice of proposed insurance, signed by the debtor and setting forth the name and home office address of the

insurer, the name or names of the debtor, the premium or amount of payment by the debtor separately for credit life insurance and credit disability insurance, the amount, term and a brief description of the coverage provided, shall be delivered to the debtor at the time such indebtedness is incurred, or at the time the debtor applies for such insurance, whichever is later. The copy of the application for, or notice of proposed insurance shall refer exclusively to insurance coverage, and shall be separate and apart from the loan, sale or other credit statement of account, instrument or agreement, unless the information required by this subsection is prominently set forth therein. Upon acceptance of the insurance by the insurer and within thirty (30) days of the date upon which (1) the indebtedness is incurred, (2) the application for such insurance is received by the insurer, or (3) the insurer determines the evidence of insurability, if required, to be satisfactory, the insurer shall cause the individual policy or group certificate of insurance to be delivered to the debtor. Said application or notice of proposed insurance shall state that upon acceptance by the insurer, the insurance shall become effective either as of the date the indebtedness is incurred or the date of application for such insurance, whichever is applicable; provided that where evidence of insurability is required and such evidence is furnished more than thirty (30) days after either the date when the debtor becomes obligated to the creditor or the date the debtor applies for such insurance, whichever is applicable, the term of the insurance shall commence on the date on which the insurance company determines the evidence to be satisfactory, and in such event there shall be an appropriate refund or adjustment of any charge to the debtor for insurance. A debtor shall not be deemed to be required to make any payment for credit life insurance or credit disability insurance unless the cost of the credit transaction to the debtor varies depending upon whether or not such insurance is procured.

(Amended by Stats. 1961, Ch. 1947.)

779.8. All policies, certificates of insurance, notices of proposed insurance, applications for insurance, 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.

(Amended by Stats. 1981, Ch. 714, Sec. 260.)

779.9. The commissioner shall within 30 days after the filing of any such policies, certificates of insurance, notices of proposed insurance, applications for insurance, endorsements and riders, disapprove any such form if the benefits provided therein are not reasonable in relation to the premium charge, or if it contains provisions which 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 rule or regulation promulgated thereunder.

(Amended by Stats. 1971, Ch. 683.)

779.10. The provisions of Sections 10290 and 10291 relating to the filing, approval and disapproval of disability policy forms shall be applicable to forms, whether of life or disability insurance, required by this article to be filed with or approved by the commissioner.

(Added by Stats. 1959, Ch. 1667.)

779.11. The provisions of subdivisions (f) and (g) of Section 10291.5 shall be applicable to the withdrawal of the approval of forms, whether of life or disability insurance, required by this article to be filed with or approved by the commissioner.

(Amended by Stats. 2009, Ch. 140, Sec. 125. (AB 1164) Effective January 1, 2010.)

779.12. Any order or final determination of the commissioner under the provisions of Sections 779.8 to 779.11, both inclusive, shall be subject to judicial review.

(Added by Stats. 1959, Ch. 1667.)

779.12a. If a group policy of credit life insurance or credit disability insurance (1) has been delivered in this State before September 18, 1959, or (2) has been or is delivered in another state before or after such date, the insurer shall be required to file only the group certificate and notice of proposed insurance delivered or issued for delivery in this State as specified in Sections 779.6 and 779.7 of this article, and such forms shall be approved by the commissioner if, (a) they conform with the requirements specified in said Sections 779.6 and 779.7; (b) they are accompanied by a certification in a form satisfactory to the commissioner that the substance of such forms are in substantial conformity with the master policy; and (c) the schedules of premium rates applicable to the insurance evidenced by any such certificate or notice are not in excess of the insurer's schedules of premium rates filed with the commissioner; provided, however, the premium rate in effect on existing group policies may be continued until the first policy anniversary date following October 1, 1963.

(Added by Stats. 1963, Ch. 1836.)

779.13. Any insurer may revise its schedules of premium rates from time to time, and shall file such revised schedules with the commissioner. No insurer shall issue any credit life insurance policy or credit disability insurance policy for which the premium rate exceeds that determined by the schedules of such insurer as then on file with the commissioner.

(Amended by Stats. 1963, Ch. 1836.)

779.14. (a) Each individual policy, group certificate, or notice of proposed insurance shall provide that in the event of termination of the insurance prior to the scheduled maturity date of the indebtedness, any refund of an amount paid by the debtor for insurance shall be paid promptly to the person entitled thereto or credited to the next payment or payments due on the indebtedness. However, the commissioner shall prescribe a minimum refund and no refund that would be less than that minimum need be made. The formula to be used in computing that refund shall be filed with and approved by the commissioner.

(b) An individual policy or group certificate of credit life insurance or of credit disability insurance or a combination thereof, or a notice of proposed insurance, shall allow an insured to rescind the insurance within 30 days of receipt of the policy or certificate or notice of proposed insurance issued pursuant to Section 779.7 and to receive a full refund, or credit if financed, of any premium that has been paid. The right to rescind shall be disclosed on the face of the individual policy, group certificate, or notice of proposed insurance in at least 14-point type and shall include the disclosure of the department's toll-free telephone number and other disclosures set forth in Section 510.

(c) No statement, disclosure, or notice made in accordance with Section 779.14 or 779.35 shall be construed to cause the policy forms, certificates of insurance, or notices of proposed insurance, by themselves, to be considered as nonstandard forms as described in Article 6.9 (commencing with Section 2249) of Subchapter 2 of Chapter 5 of Title 10 of the California Code of Regulations.

(d) This section applies to all policies issued or delivered in this state on or after January 1, 1999. All policies subject to this section that are in effect on January 1, 1999, shall be construed to be in compliance with this section, and any provision in any policy which is in conflict with this section shall be of no force or effect.

(Amended by Stats. 1998, Ch. 585, Sec. 1. Effective January 1, 1999.)

779.15. If a creditor requires a debtor to make any payment for credit life insurance or credit disability insurance and an individual policy or group certificate of insurance is not issued, the creditor shall immediately give written notice to such debtor and shall promptly make an appropriate credit to the next payments due on the account.

(Added by Stats. 1959, Ch. 1667.)

779.16. The amount charged to a debtor for any credit life or credit disability insurance shall not exceed the premium rates filed with the commissioner for the coverage provided or the premiums charged by the insurer, as computed at the time the charge to the debtor is determined, whichever is less.

(Amended by Stats. 1963, Ch. 1836.)

779.17. Nothing in this act shall be construed to authorize any charge now prohibited under any statute or rule governing credit transactions, irrespective of whether the same is contained in this code or made pursuant thereto.

(Added by Stats. 1959, Ch. 1667.)

779.18. All policies of credit life insurance and credit disability insurance shall be delivered or issued for delivery in this State only by an admitted insurer, and shall be issued only through holders of certificates, licenses or authorizations issued by the commissioner. This article is hereby specifically made applicable to reciprocal or interinsurance exchanges and fraternal benefit societies.

(Added by Stats. 1959, Ch. 1667.)

779.19. All claims shall be promptly reported 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.

All claims shall be paid either by draft drawn upon the insurer, by check of the insurer, or, with consent of the insured, by an electronic funds transfer to the order of the claimant to whom payment of the claim is due pursuant to the policy provisions, or upon direction of such claimant to one specified.

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 a group policyholder may, by arrangement with the group insurer, draw drafts or checks in payment of claims due to the group policyholder subject to audit and review by the insurer.

(Amended by Stats. 2009, Ch. 433, Sec. 11. (AB 328) Effective January 1, 2010.)

779.20. When credit life insurance or credit disability insurance is required as additional security for any indebtedness, the debtor shall, upon request to the creditor, have the option of furnishing the required amount of insurance through existing policies of insurance owned or controlled by him or of procuring and furnishing the required coverage through any insurer authorized to transact

an insurance business within this State. This section shall not prevent the creditor from exercising his right to approve or disapprove of the insurer furnishing the credit insurance.

(Added by Stats. 1959, Ch. 1667.)

779.21. The commissioner may adopt, pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, reasonable rules and regulations necessary to carry out this article.

(Amended by Stats. 1992, Ch. 32, Sec. 2. Effective January 1, 1993.)

779.22. The commissioner, in his discretion, may revoke or suspend the license or certificate of authority of any person guilty of a violation of any provisions of this article or any rules and regulations adopted pursuant thereto. In addition to any other penalty provided by law, any person who violates an order of the commissioner after it has become final, and while such order is in effect, shall, upon proof thereof to the satisfaction of the court, forfeit and pay to the State of California a sum not to exceed two hundred fifty dollars (\$250) which may be recovered in a civil action, except that if such violation is found to be willful, the amount of such penalty shall be a sum not to exceed one thousand dollars (\$1,000).

(Added by Stats. 1959, Ch. 1667.)

779.23. Whenever the commissioner finds that there has been a violation by an insurer of this article or any rules or regulations issued pursuant thereto, he shall proceed as provided in Section 701. Whenever the commissioner finds that there has been such a violation by any licensee other than an insurer, he shall proceed as provided in Chapter 5 of Part 1 of Division 3 of Title 2 of the Government Code.

(Added by Stats. 1959, Ch. 1667.)

779.24. Any party affected by an order of the commissioner shall be entitled to judicial review in accordance with the provisions of Section 12940.

(Added by Stats. 1959, Ch. 1667.)

779.25. If any provision of this article, or the application of such provision to any person or circumstances, shall be held invalid, the remainder of the article, and the application of such provision to any person or circumstances other than those as to which it is held invalid, shall not be affected thereby.

(Added by Stats. 1959, Ch. 1667.)

779.26. Credit life insurance and credit disability insurance within the scope of this article, where the form of policy including the premium rates pertaining thereto have been filed with the commissioner and not disapproved by him or the premiums charged have been in accordance with those provided by any law of this state or regulation of the commissioner promulgated thereunder, are not subject to the provisions of Section 10214 or Section 10270.65 of the Insurance Code.

(Added by Stats. 1971, Ch. 683.)

779.27. In accordance with this article and the regulations adopted pursuant to Section 779.21, the commissioner shall, after notice and public hearing, promulgate regulations setting forth standard forms of credit life and disability insurance policies, certificates of insurance, notices of proposed insurance, applications for insurance, endorsements, and riders. The use of such forms shall be mandatory, except that commissioner may approve the use of nonstandard forms which are in accord with this article and the regulations adopted pursuant to Section 779.21.

(Added by Stats. 1976, Ch. 1261.)

779.28. For purposes of establishing the fact of disability in credit disability insurance, chiropractors' certifications of disability when made within the scope of their license shall be accepted by insurers as equally valid as physicians and surgeons' certifications of disability when made within the scope of their license.

(Added by Stats. 1977, Ch. 651.)

779.30. (a) An individual policy or group certificate may exclude from credit disability insurance coverage only those preexisting illnesses, diseases, or physical conditions for which the debtor actually received medical advice, consultation, or treatment both within six months before and six months after the effective date of the debtor's coverage and which result in disability commencing within two years of the effective date. This provision shall not preclude the exclusion of other preexisting diseases or physical conditions by name or specific description.

(b) An individual policy or group certificate may exclude from credit life insurance coverage only those preexisting illnesses, diseases, or physical conditions for which the debtor actually received medical advice, consultation, or treatment both within six months before and six months after the effective date of the debtor's coverage and that result in death within six months after the effective date.

(c) Preexisting condition provisions on revolving accounts for credit disability insurance shall be subject to the limitations of subdivision (a), and for credit life insurance shall be subject to the limitations of subdivision (b).

(d) In the case of revolving accounts, any preexisting condition provision may be applied separately to each charge or advance, in which case the time periods in the applicable subdivision shall be measured from the date of each separate charge or advance.

If any preexisting condition provision is applied to a subsequent charge or advance on a revolving account the consumer shall be given the following notice at least annually:

"NOTICE: THIS INSURANCE MAY NOT COVER AN ADVANCE OR CHARGE UNDER YOUR CREDIT LINE IF YOUR DISABILITY OR DEATH RESULTS FROM A CONDITION FOR WHICH YOU HAVE SEEN A DOCTOR OR CHIROPRACTOR IN THE SIX MONTHS BEFORE THE ADVANCE OR CHARGE."

(e) The notice required by subdivision (d) may be printed on a periodic billing statement or given separately.

(f) Subdivision (d) does not apply to a credit card as defined in Section 1747.02 of the Civil Code.

(Amended by Stats. 1992, Ch. 366, Sec. 2. Effective July 27, 1992. Operative January 1, 1993, by Sec. 3 of Ch. 366.)

779.31. The debtor shall have the right to terminate credit life insurance or credit disability insurance at any time for any reason upon notice to the creditor. A refund shall be paid or credited as provided in Section 779.14 or by the regulation of the commissioner. If the premium refund is paid to the creditor, the creditor shall credit the debtor's account with the refund and any interest or finance charge adjustment as provided in the credit agreement.

(Added by Stats. 1983, Ch. 973, Sec. 3.)

779.32. (a) The term "compensation," for the purpose of this article means any valuable consideration including, but not limited to, all paid or credited commissions, contingent commissions, service fees, fees, consulting fees paid or credited within or outside this state in relation to business produced or to be produced or written or to be written in this state, electronic data process equipment or services, supplies (other than forms approved by the commissioner and the usual claims and reporting forms and envelopes for transmitting the claims and brochures, rate books, and rate charts), rental equipment of any type, advertising, telephone provided by an insurer, its agent, or any related person without charge of actual charge or at a charge less than the usual cost, profit sharing plans, experience rating refunds, experience rating credits, dividends, expense allowances, stock plans or bonuses, and any other form of credit, including moneys assumed, or expenditures in any form whatsoever, direct or indirect, paid by or on behalf of the insurer, or by any subsidiary or parent, or subsidiary of the parent of the insurer, or by any other person to or on behalf of any group policyholder, agent, general agent, or disability broker or withheld by any group policyholder, agent, general agent, or disability broker.

(b) The maximum amount of total compensation, as defined in subdivision (a), payable by any insurer shall not exceed 35 percent of the prima facie credit life insurance rates and 30 percent of the prima facie disability insurance rates. Of the maximum total compensation allowable, the creditor shall be limited to a compensation rate of 27.5 percent of the prima facie credit life insurance rates and 23.75 percent of the prima facie credit disability insurance rates. The general agent's maximum total compensation allowable shall be limited to 7.5 percent of the prima facie credit life insurance rates and 6.25 percent of the prima facie credit disability insurance rates. A creditor may not receive both the creditor's and the general agent's compensation on its own produced insurance. A general agent may also receive additional primary compensation deducted from the maximum primary compensation allowable to the creditor.

If the commissioner has reason to believe that compensation is in fact or is contracted to be in excess of the maximum amount specified in this section, the commissioner may conduct a hearing or investigation, including the right to examine any contracts relating to the direct or indirect payment of compensation, to determine whether the insurer, general agent, or any other person is paying or whether an agent, general agent, or broker is receiving any form of compensation in excess of the applicable maximum amount of compensation specified in this section.

(c) On and after January 1, 1988, no contract of credit life or credit disability insurance shall be issued in this state unless, if applicable, the maker first ascertains, using reasonable diligence, that any nonadmitted reinsurer possesses capital and surplus of at least one million dollars (\$1,000,000).

(d) Nothing in this article shall be construed to authorize the payment of any form of compensation to any creditor or to any person otherwise prohibited from receiving that form of compensation. Nor shall this article be construed to authorize the payment of experience rating refunds prior to the anniversary date of the policy. Those refunds shall be computed annually based on premiums earned to that anniversary date.

(Amended by Stats. 1986, Ch. 1145, Sec. 2.)

779.33. The use of compensating balances or special deposit accounts in connection, either directly or indirectly, with a credit life insurance program or a credit disability insurance program of a credit institution, whether on a group or an individual basis, is prohibited.

Compensating balances or special deposit accounts include, but not to the exclusion of other types of balances and accounts, the following:

- (1) The deposit of premiums to the account of the insurer in the financial institution for which the insurer provides the credit insurance program, when the account is either noninterest bearing or at a rate of interest less than usual or is controlled by the institution.
- (2) Remitting premiums to the insurer after the expiration of the grace period on a regular basis so that the arrearage period is constant.
- (3) The retention of premiums by an agent or broker to whom the financial institution remits premiums for a period of time which is not reasonably related to the time normally expected to be needed for the agent or broker to remit the premium to the insurer, if that delay is a continuing feature of the premium paying process.
- (4) Any other practice which unduly delays receipt of premiums by the insurer on a regular basis, or which is followed by an insurer when the practice involves use of the financial resources of the insurer for the benefit of the credit institution.

The foregoing criteria apply regardless of whether premiums are due the insurer on the single premium in advance system or on the monthly outstanding balance system. Nothing herein shall prevent the insurer from making deposits in a financial institution which are not related to a credit insurance program if it is in fact not related to whether the insurer is the insurer which insures the credit insurance program.

(Added by Stats. 1985, Ch. 1316, Sec. 4.)

779.36. (a) The commissioner shall adopt regulations that become effective no later than January 1, 2001, specifying prima facie rates based upon presumptive loss ratios, with rates which would be expected to result in a target loss ratio of 60 percent, or any other loss ratio as may be dictated after applying the factors contained in this subdivision, for each class of credit disability, credit unemployment, credit property, and credit life insurance. The prima facie rates shall be based upon loss experience filed with the commissioner, aggregated by class.

If any rate established under the commissioner's ratemaking authority produces actual loss ratios that are lower than the presumptive loss ratio, prospective rates may be adjusted, but no retroactive refunds shall be required. In order to provide insurers an opportunity to earn a fair and reasonable rate of return, the commissioner in the ratemaking process shall consider the following factors: acquisition costs, including commissions and other forms of compensation, expenses, profits, loss ratios, reserves, and other reasonable actuarial considerations.

(b) The commissioner shall provide for rate deviations. Upward and downward deviations shall be considered by the commissioner upon initiation by the department, or at the insurer's request at the time of review of annual experience reports filed by insurers, or as provided by regulations pursuant to Section 779.21. Requested deviation rates shall be deemed approved if not disapproved within 120 days after submission to the department for approval. Creditor and agent compensation shall be based upon the prima facie rate, and shall not be affected by a deviated rate pursuant to this subdivision. This subdivision does not prohibit an insurer from paying compensation that is less than the prima facie rate.

(c) The commissioner shall adopt regulations that become effective no later than January 1, 2001, specifying prima facie rates based upon presumptive loss ratios, with rates which would be expected to result in a target loss ratio of 60 percent, or any other loss ratio as may be dictated after applying the factors contained in this subdivision, for each class of joint life insurance, joint disability insurance, joint credit unemployment insurance, and joint credit property insurance. Those rates shall be expressed as a multiple of the prima facie rate for each class of insurance subject to subdivision (a), and shall be based upon loss experience filed with the commissioner, aggregated by class.

If any rate established under the commissioner's ratemaking authority produces actual loss ratios that are lower than the presumptive loss ratio, prospective rates may be adjusted, but no retroactive refunds shall be required. In order to provide insurers an opportunity to earn a fair and reasonable rate of return, the commissioner in the ratemaking process shall consider the following factors: acquisition costs, including commissions and other forms of compensation, expenses, profits, loss ratios, reserves, and other reasonable actuarial considerations.

(d) Loss ratios shall consist of the ratio of incurred losses to earned premiums in a specified reporting period.

(e) The commissioner shall, on an annual basis, make actual annual loss ratios under subdivisions (a) and (c) available to the public.

(Amended by Stats. 1999, Ch. 413, Sec. 1. Effective January 1, 2000.)

