

INSURANCE
DEPARTMENT OF BANKING AND INSURANCE
DIVISION OF BANKING

Premium Finance Agreements

Adopted Amendment: N.J.A.C. 3:22-1.1

Proposed: March 1, 2004 at 36 N.J.R. 1154

Adopted September 15, 2004 by Holly C. Bakke, Commissioner,
Department of Banking and Insurance

Filed September 15, 2004 as R. 2004 d. 389, **with substantive changes** not
requiring additional public notice and comment (see N.J.A.C. 1:30-6.3)

Authority: N.J.S.A. 17:1-15(e) and 17:16D-7 and 8

Effective Date: October 18, 2004

Expiration Date: November 4, 2004

Summary of Public Comments and Agency Responses:

The Department received four comments from: the National Premium Finance Association, the Professional Insurance Agents of New Jersey, the New Jersey Manufacturers Insurance Company, and the Independent Insurance Agents and Brokers of New Jersey.

COMMENT: The commenter supports the proposed amendment. The commenter noted that financing multiple policies in a single premium finance agreement has been and continues to be a universal practice in the industry on a national basis. A one-policy per agreement approach requires premium finance companies to process more agreements for New Jersey borrowers than for borrowers anywhere else, resulting in higher costs. For instance, if a borrower finances three

policies in New Jersey, three separate fees would be charged, but those same three policies financed in New York would result in a single fee.

The commenter opined that another benefit of financing multiple policies on a single premium finance agreement is that it enables the borrower to obtain lower interest rates than those which would be charged if separate agreements were required for multiple policies.

The commenter argues that by not allowing multiple policies to be financed through a single premium finance agreement the financing of certain types of insurance such as workers compensation and medical malpractice becomes difficult or impossible to obtain in New Jersey, due to the fact that, in many instances, these coverages can only be financed on the same agreement with other non-auditable policies such as general liability.

The commenter believes that the proposal will have a favorable impact on both premium finance companies and their customers. Currently, New Jersey borrowers are forced to pay more interest and fees, and to bear more administrative inconvenience to finance their insurance than borrowers in other states.

The commenter suggested that the proposed amendment be clarified as follows:

The terms “non-commercial” and “commercial” are not defined.

N.J.A.C. 3:22-1.1 should refer to “personal lines” instead of “non-commercial.” Personal lines policies include private passenger automobile, dwelling, fire and personal liability, homeowners, personal inland marine and personal excess, or those policies issued for personal, family or household purposes.

“Commercial” policies should be those policies subject to the Commercial Insurance Deregulation Act of 1982, N.J.S.A. 17:29AA-1 et seq.

The final sentence of N.J.A.C. 3:22-1.1(c) should read “finance” rather than “cover,” as follows: (additions in boldface, deletions in brackets) “Regardless of whether they [cover] **finance** one or multiple policies, all premium finance agreements shall disclose current conditions and provisions applicable to each loan”

RESPONSE: The Department acknowledges the factors identified by the commenter in support of the proposed amendment. The Department agrees with the commenter and has amended the proposal upon adoption so that the term “personal lines” is substituted for the term “non-commercial” in N.J.A.C. 3:22-1.1. The Department would consider defining these terms at a later date when the chapter is to be readopted. The Department also agrees with the commenter that the final sentence of N.J.A.C. 3:22-1.1(c) should be clarified by using the word “finance” rather than “cover” and is making this revision upon adoption.

COMMENT: The commenter believes that the proposed amendment will benefit insurance consumers by allowing them to finance the premiums of multiple commercial policies in a more efficient manner. Furthermore, consumers may be able to negotiate lower interest rate loans for premium finance agreements where multiple policies are covered as opposed to only when one policy is covered.

Two commenters urged the Department to amend the proposal so that premium on multiple non-commercial policies can also be financed under one premium finance agreement.

RESPONSE: The Department appreciates the commenter’s positive view of the proposed amendment. The Department has yet to address the issue of including multiple personal lines policies under a single finance agreement, thus, those comments are beyond the scope of this proposal.

COMMENT: The commenter is of the opinion that, while the proposal may make things more convenient for premium finance companies, it raises concerns for insurance companies. The commenter argues that the proposed amendment could result in the cancellation of one policy for failure of the insured to pay an installment on another policy included on the same premium finance agreement. The commenter opined that this is particularly troublesome in mandatory coverage situations such as workers compensation. If a commercial insured failed to make a payment on a commercial general liability policy and the workers compensation policy is financed under the same premium finance agreement, the result might be the cancellation of the workers compensation policy at the direction of the premium finance company. Thus, the workers compensation insurer would be placed in an untenable position of having to defend cancellation of the workers compensation policy for failure to make payment on the commercial general liability policy. The commenter suggested that workers compensation policies should be excluded from the types of commercial policies that may be financed through a single premium finance agreement.

Furthermore, the commenter is opposed to the possible extension of this rule to non-commercial policies as well. The commenter believes that having multiple non-commercial policies financed under one premium finance agreement is not “consumer friendly” because it could pose a hazard to consumers who may not recognize that the failure to pay a premium could result in a cancellation of multiple policies. The commenter is concerned that carriers already have difficulties responding to requests for cancellations from premium finance companies because they fail to produce the appropriate documentation to cancel one policy. The commenter further contends that, even where documentation is produced, insurance companies must follow applicable cancellation notice requirements. The commenter expressed concern that

insurers already spend an enormous amount of time and administrative resources reinstating premium finance cancellations when payment is received. Thus, consolidation of personal lines policies under one premium finance agreement would only serve to exacerbate the problems.

RESPONSE: The Department recognizes the concern raised with respect to the potential cancellation of workers compensation policies as discussed in the comment. However, an amendment excluding such policies would constitute a substantive change to the proposal which cannot be made upon adoption. See N.J.A.C. 1:30-6.3. Given the significant interests implicated by workers compensation policies, including the funding of medical treatments and income continuation benefits for injured workers, the Department has determined that in the future it will propose further amendments to the rule in order to solicit comments on this issue from interested parties.

As proposed, the amendment gives the policyholder an option of either financing multiple policies under one premium finance agreement or financing each policy under a single premium finance agreement. The Department has yet to address the issue of including multiple personal lines policies under a single finance agreement, thus, those comments are beyond the scope of this proposal.

COMMENT: The commenter is concerned about scenarios where an insured requests cancellation of one or more (but not all) of the policies; where a company cancels one or more (but not all) of the policies due to an unpaid audit on a prior term or for underwriting reasons; and where an insured initially defaults on a payment and the finance company requests cancellation, after which the insured makes the missed payment and the finance company requests reinstatement, where, however, the reinstatement is at the option of the insurer and one or more (but not all) policies are reinstated and the others remain cancelled. The commenter

opined that this creates an extremely confusing situation for the policyholder and could result in potential financial liability on insurance producers.

To address these concerns, the commenter suggested the following revisions to the proposal:

- (A) An additional disclosure (in large type) should be signed by the consumer outlining the potential impact should one or more (but not all) of the policies be cancelled by either the consumer or the company;
- (B) The inclusion of a provision in the regulation that will hold-harmless the producer in the event of a cancellation of insurance policies due to the multiple policy situations discussed above;
- (C) It should be at the option of the producer whether or not to offer to finance multiple policies on one premium finance agreement; and
- (D) A requirement that the party who received the initial disbursement from the finance agreement should be responsible for refunding the unearned premiums should any policy be canceled under the contract.

RESPONSE: The adopted rule provides that a premium finance agreement may only be used on multiple commercial policies that are issued through the same producer.

N.J.S.A. 17:16D-13(b) provides that the insurance agent or broker who negotiated the insurance contract to which the premium finance agreement relates shall be sent a copy of the notice required to be sent by the premium finance company to the insured of the intent to cancel the insurance contract if a default by the insured under the premium finance agreement is not cured in a timely manner as set forth in that statute.

In fulfillment of their due diligence obligation, producers should, at the time the insured enters into a premium finance agreement if the producer is involved in that transaction and upon receipt of a notice of intent to cancel as referenced in N.J.S.A. 17:16D-13(b), explain the potential consequences that can result from a failure to make an installment payment on a premium finance agreement that covers multiple commercial policies. In circumstances where they deem it advisable to do so, producers may provide a written notification to insureds describing those consequences and obtain from the insured a signed acknowledgement of their receipt of it. In addition, commercial insureds who finance multiple policies are generally more knowledgeable and have greater access to legal advice than do insureds on personal lines policies. Based upon the foregoing, the Department has determined it is not necessary to have the amended rule require that the insured sign an additional disclosure on the implications of the cancellation of one or more policies covered in a premium finance agreement. Furthermore, such a revision would be a substantive change that could not be made upon adoption.

Similarly, the issue regarding insurance producer liability and the addition of rule text purporting to hold a producer harmless in the event of a cancellation is beyond the scope of this rule, which is limited to the implementation of N.J.S.A 17:16D-1 et seq. regarding premium finance agreements.

On the issue of giving the producer the option to offer financing on multiple policies in one premium finance agreement, the Department notes that the proposal as published provided for such option on the part of premium finance companies. In addition, nothing in the rule prohibits producers from declining to offer multiple commercial policies to be financed in one premium finance agreement if the producer feels that the risks attendant upon such arrangements outweigh the benefits.

With respect to the issue of the return of unearned premium, the Department notes that this issue is governed by the provisions of N.J.S.A 17:16D-14, which requires that an insurer that is on notice that a canceled insurance contract was financed shall return any unearned premiums due under the insurance contract to the premium finance company. In addition, any amendment addressing this issue would be beyond the scope of this proposal.

Federal Standards Statement

A Federal standards analysis is required when any State agency proposes to adopt, readopt, or amend State regulations that exceed any Federal standards or requirements.

The adopted amendment implements the Insurance Premium Finance Company Act, N.J.S.A. 17:16D-1 et seq., which pertains to issues that are exclusively the subject of State law and are not subject to any Federal standards or requirements. Consequently, no Federal standards analysis is required.

Full text of the adoption follows (additions to proposal indicated in boldface with asteriks ***thus***; deletions from proposal indicated in brackets with asterisks*[thus]):

3:22-1.1 Premium finance agreement

(a) – (b) (No change from proposal.)

(c) Companies shall utilize separately signed premium finance agreements for each *[non-commercial]* **personal lines*** policy, renewal, addition or change on which the premium is to be financed. With respect to the premiums on commercial policies, companies may utilize either separately signed agreements, or one premium finance agreement covering multiple

commercial policies, renewals, additions or changes where the commercial policies to which the single premium financing agreement pertains are issued through the same producer. Regardless of whether they *[cover]* **finance*** one or multiple policies, all premiums finance agreements shall disclose current conditions and provisions applicable to each loan.

(d) (No change)

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