

## **Declaratory Ruling 95-301-M**

### **Group credit insurance coverage of utility bills**

April 28, 1995

#### **I. BACKGROUND**

Virginia Surety Company, Inc. ("Virginia Surety") desires to sell in Michigan a group insurance product to utilities. This product would provide coverage on behalf of utility customers in the event of their death, disability, or involuntary unemployment. With respect to disability, the insurance would provide utility bill coverage for up to 180 days after the onset of disability.

By a letter dated August 19, 1994, the Michigan Insurance Bureau disapproved group insurance forms to be used in connection with this program. In response, Virginia Surety submitted a Request for Declaratory Ruling dated November 15, 1994.

Virginia Surety seeks a ruling that, for purposes of group credit insurance coverage, utility customers who are provided utility services and pay for these services in arrears are "debtors" for purposes of the Credit Insurance Act ("Act"), and constitute a permissible group under the Michigan Insurance Code of 1956, as amended ("Code"). By its letter of April 24, 1995, Virginia Surety augmented its request by responding to issues identified by the staff of the Insurance Bureau.

#### **II. ISSUES**

The principal issues are:

1. Does credit insurance governed by the Act cover utility bills that do not exist at the onset of death or disability?
2. If not, does Virginia Surety's product constitute credit insurance under the Act?

#### **III. ANALYSIS**

Authority to Issue a Declaratory Ruling

The Commissioner of Insurance ("Commissioner") is authorized to issue this declaratory ruling by Section 63 of the Administrative Procedures Act of 1969, as amended ("APA"), MCL 24.263, which provides:

On request of an interested person, an agency may issue a declaratory ruling as to the applicability to an actual state of facts of a statute administered by the agency or of a rule or order of the agency. An agency

shall prescribe by rule the form for such a request and procedure for its submission, consideration and disposition. A declaratory ruling is binding on the agency and the person requesting it unless it is altered or set aside by any court. An agency may not retroactively change a declaratory ruling, but nothing in this subsection prevents an agency from prospectively changing a declaratory ruling. A declaratory ruling is subject to judicial review in the same manner as an agency final decision or order in a contested case.

### The Request in Context

As stated in the first numbered paragraph of the request for declaratory ruling, Virginia Surety requests a declaratory ruling that, for purposes of group credit insurance coverage, utility customers who are provided utility services and pay for those services in arrears are "debtors" for purposes of the Act, MCL 550.601 *et seq.*; and constitute a permissible group under the Code, MCL 500.100 *et seq.*

In paragraph four of its request, Virginia Surety states that it desires to sell a group credit insurance policy to the Detroit Edison Company and similar group policies to other interested utilities that would provide protection to "insured debtors" in the event of death, disability, or involuntary unemployment. The proposed "bill payment protection program" would cover customers of Detroit Edison and other utilities selecting the insurance coverage.

Virginia Surety has stated in a May 28, 1993, letter to the Insurance Bureau staff that:

The premium rate would be established as a percentage of the monthly utility bill. *The insurance benefit would be tied to the electric utility customer's actual utility bill(s) during the actual duration of involuntary unemployment or accident disability.* Claim benefits would be paid directly to Detroit Edison and applied to the electric utility customer's utility bill account balance.

As stated on page 2 of the August 19, 1994, staff disapproval letter to Virginia Surety, which is Attachment A to its declaratory ruling request, the proposed plan would also provide \$60,000 of accidental death coverage per \$100 of monthly utility bill for individuals over age 65.

### Existing Indebtedness is Required

The statutes set forth in the Act and the Code must govern. Section 4 of the Act, MCL 550.604, provides in pertinent part that:

Credit life insurance and credit accident and health insurance shall be issued only in the following forms:

\*\*\*\* Material Omitted Here \*\*\*\*

(c) Group policies of life insurance issued to creditors providing insurance upon the lives of debtors on the *term plan*;

(d) Group policies of accident and health insurance issued to creditors on a *term plan* insuring debtors or disability provisions in group life policies to provide such coverage. [Emphasis added]

Section 5 of the Act, MCL 550.605, provides in pertinent part that: "*The amount of credit life insurance shall not exceed the indebtedness . . .*" [Emphasis added] Section 6 of the Act, MCL 550.606, provides that:

*The amount of periodic indemnity payable by credit accident and health 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 shall not exceed the original indebtedness divided by the number of periodic installments.* [Emphasis added]

Section 7 of the Act, MCL 550.607, provides that:

*The term of any credit life insurance or credit accident and health insurance shall commence, subject to acceptance by the insurer, on the date when the debtor becomes obligated to the creditor, 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. 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 18.* [Emphasis added]

Section 4416 of the Insurance Code, MCL 500.4416, provides for group life insurance on persons "who become *borrowers* from 1 *financial institution*, . . . or who become purchasers of merchandise or other tangible property from 1 vendor under agreement to *repay the sum borrowed* or to *pay the balance* of the price of the merchandise or other tangible property *purchased on the installment plan over a period of not more than 10 years*, to the extent of their indebtedness to the financial institution or vendor." [Emphasis added]

It is clear from the above-cited statutes that Virginia Surety's proposed plan was not envisioned or contemplated by the Legislature in the Credit Insurance Act. In contending

that utility customers are "debtors" in the context of the proposed plan, Virginia Surety relies upon the definition of "credit transaction" in Rule 1(1)(c) of the Credit Insurance Rates, Forms, and Standards, 1987 AACRS, R 550.201(1)(c), which provides that:

'Credit transaction' means any transaction under which payment may be made at a future date for money loaned or goods, services, or property sold or leased.

The phrase "credit transaction" is interwoven with the concept and definition of "indebtedness." Section 3(5) of the Act, MCL 550.603(5), defines indebtedness to be ". . . the total amount payable by a debtor to a creditor in connection with a loan or other credit transaction." Indebtedness is critical to the definition of credit transaction because Section 5 of the Act, states that, "The amount of credit life insurance shall not exceed the indebtedness . . ." Similarly, Section 6 of the Act, MCL 550.606, states that:

The amount of periodic indemnity payable by credit accident and health 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 shall not exceed the original indebtedness...

Hence, without indebtedness, there may be no credit insurance. Therefore, within the context of Michigan's credit insurance statutes, the definition of credit transactions demands that the payment(s) "to be made at a future date" contemplate payment(s) for money *already* loaned or goods, services or property *already* sold or leased. The definition does *not* include payment(s) to be made at a future date for money *not yet* loaned or goods, services or property *not yet* sold or leased.

The statutory mandate in Section 6 of the Act that the amount of periodic indemnity "shall not exceed the aggregate of the periodic scheduled unpaid installments of indebtedness" and "shall not exceed the original indebtedness . . ." make it abundantly clear that the Legislature envisioned credit insurance between a debtor and a creditor for payment of an indebtedness. Under the proposed plan, there is no such arrangement for payment of an indebtedness between the customer and a utility company.

The Michigan Public Service Commissioner Rule R 460.2116, included in the Consumer Standards and Billing Practices for Residential Gas and Electric Service, states:

A utility shall permit each customer a period of not less than 21 days from the date of rendering the bill *to pay in full*. [Emphasis added]

This phrase, "pay in full" clearly indicates that there is no expectation of indebtedness such as that contemplated by the Credit Insurance Act. Rather, the proposed plan contemplates the payment of benefits which, by Virginia Surety's own acknowledgment, are tied to the utility customers' *future* utility bills during the period of involuntary unemployment or disability. As to the accidental death benefit contemplated by the proposed plan, there is no question that the contemplated coverage, even under Virginia

Surety's logic, would exceed the indebtedness in violation of Section 5 of the Act, which provides expressly that the amount of credit life insurance shall not exceed the indebtedness.

Virginia Surety's attempt to cover a series of future utility bills for services which have not yet been provided is clearly inconsistent with the requirement that the coverage shall not exceed the original indebtedness at the time the insurance contract becomes enforceable. Virginia Surety's position would effectively render meaningless the phrases "original indebtedness" and "aggregate of the periodic scheduled unpaid installments." This is reinforced by recognition that the use of the word "scheduled" in Section 6 of the Act, within the context of credit transactions includes not only timing but also the defined *amount* of the installment payments. An amortization schedule of a loan includes periods, loan balances, and *amounts of payment*.

Failure to make the distinction between transactions which have already taken place from transactions which have not yet taken place would allow the definition of a credit transaction to include payments to be made for all future purchases. The Act simply does not envision nor provide for the present sale of insurance coverage for loans and purchases which may occur in the future where there may be no recurring obligation to pay a debt.

Rules of statutory construction apply to administrative rules. MCL 24.232. The Legislature is presumed to know of and legislate in harmony with existing laws, and the language of every enactment is, so far as possible, to be construed consistent with other laws which it does not in plain and unequivocal terms modify or repeal. *People v Harrison*, 194 Mich 363 (1916); *Endykiewicz v State Highway Comm*, 414 Mich 377 (1982).

It is a well established rule that in the construction of a statute or in the interpretation of its provisions, all statutes relating to the same subject or having the same general purpose should be read together as constituting one law, although they were enacted at different times. *Palmer v State Land Office Bd*, 304 Mich 628, 636-637 (1943). It is a fundamental rule of statutory construction that statutes in pari materia must be construed together and must be interpreted as complimentary to each other. *Doan v Kellogg Community College*, 80 Mich App 316, 320-321 (1977). The Act, the Code, and the Credit Insurance Rules must be read in pari materia and in harmony. Virginia Surety's strained interpretation of Rule 1(1)(c) is clearly inconsistent with the Act and cannot be construed to authorize the proposed plan, which is clearly unauthorized by statute. To permit the proposed program would require an amendment of the Act.

#### **IV. RULING**

It is the Commissioner's ruling that utility customers under Virginia Surety's proposed program do not constitute "debtors" under the Act and therefore Virginia Surety is not authorized to market its program as group credit insurance.

This ruling is limited to the facts which were presented by the applicant and the statutory sections identified by the applicant in its declaratory ruling request.

Patrick M. McQueen  
Acting Commissioner of Insurance