

**COMMONWEALTH OF PUERTO RICO**  
**OFFICE OF THE COMMISSIONER OF INSURANCE**

December 11, 1987

Ruling Letter No.: N-OE-12-11-87

TO ALL FINANCIAL INSTITUTIONS

Re: Public Law No. 78 enacted on July 2,  
1987

Dear Sirs:

Being aware of the questions and difficulties that have emerged with regards to the recently approved Public Law No. 78 enacted on July 2, 1987, which amends sections 27.130 and 27.160 of the Puerto Rico Insurance Code, our Office issues this ruling letter in order to explain the aspects of said public law that are deemed be most important. Given that this ruling letter is directed at financial institutions, the scope of which will be limited to insurance transactions resulting from the credit activity (creditor-borrower relationship) carried out by such institutions.

The legislative intent of the amendments issued by said public law is to broaden and make clear the borrower's right to choose the insurer preferred by the borrower and to place the insurance with a producer (insurance agent or broker) of his choosing, whenever insurance is required in a credit transaction, while preserving and protecting the creditor's rights in such transactions.

Subsection (1) of Section 27.130 of the Puerto Rico Insurance Code, after the amendments, remains essentially the same as the previously effective provisions: this subsection prohibits conditioning a loan by requiring that an insurance policy that will be provided must be transacted with a particular insurer or through a certain insurance producer. Generally speaking, the amendment to Public Law No. 78, *supra*, extends said prohibition to insurance with premiums that must be directly or indirectly paid by the borrower.

Subsection (2) of said amended section will also retain in essence its prior wording, thus maintaining the creditor's right to reject the insurer selected by the borrower and determine the adequacy of the acquired insurance. Nonetheless, said public law provides the conditions under which the creditor may reasonably exercise this right, which are indicated below:

- (1) The creditor's rejection of the insurer must be based solely on standards that are reasonable and that are applied in a uniform manner. Said standards must be limited to the scope of the required insurance coverage, the insurer's financial solidity, and the service class said insurer provides.

- (2) The creditor is prohibited from using or revealing information obtained as a result of this requirement to provide insurance, if such information favors the creditor or is detrimental to borrowers, insurance producers, or insurers.
- (3) The creditor is prohibited from charging an additional fee for managing the required insurance or for substituting such. However, this prohibition does not apply to interest charged for financing premiums or charges for administrative fees allowed in other laws.

Public Law No. 78, *supra*, adds a new subsection (3) to said section 27.130, through which special treatment is given to single interest insurance for physical damage coverage, e.g. insurance policies that only cover the creditor's insurable interest on the property that is the object of a credit transaction and the premium of which is paid by the borrower. In practical terms, said section applies mainly to automobile financing transactions.

Usually, when buying an automobile through financing, the automobile buyer has two options to comply with the insurance requirement that will be issued by the creditor, which are:

1. To obtain a dual interest policy with the preferred insurer and through the insurance agent or broker of the borrower's choosing, provided that the selection made by the borrower complies with the rules that have been established by the creditor in accordance with Section 27.130 (1) and (2) of the Puerto Rico Insurance Code.
2. To agree to coverage under one of the master simple interest policies subscribed by the insurers that the creditor, exercising its rights as insurer, has selected for placing this type of insurance.

If the insurance used in the single interest insurance, said subsection (3)(a) provides that the creditor provides the buyer with a list of at least five insurers that have been previously qualified and selected by the creditor. When choosing the insurers, the creditors reserve the right currently enjoyed by such to also choose the insurance producer through which the insurance will be placed.

In accordance with the above, every financial institution subject to said provision shall file such list with our Office on or before January 1, 1988. Any modification made to such list shall also be filed with this Office within ten (10) days following the modification.

As of January 1, 1988, any creditor that has not filed such list shall be considered to not be in compliance with section 27.130 (3) (a), *supra*, unless said Office is convinced that it has not been possible for the creditor to compile such list of insurers. To this end, the creditor shall file with this Office a detailed explanation of the reasons that have prevented such creditor of obtaining said amount of insurers. In turn, this Office shall make the corresponding decision.

Non-compliance with section 27.130 (3) (a), *supra*, is provided for in subsection (3) (b) of said section: if one or more of the insurers selected by the creditor becomes insolvent or cancels the insurance which results in the selection of another insurance with higher premiums,

the creditor shall assume the consequences of said selection. The practical effect of such shall be that the creditor must pay from its funds the difference in premiums resulting from the change to the new insurance.

Otherwise, if the creditor complies with said section, the provisions and obligations of the financing contract that are consistent with current legislation applicable to such cases shall prevail.

Public Law No. 78 adds a new subsection (4) to said section 27.130, which is directed at insurance provided by the creditor, except for simple interest insurance. Said creditor, after obtaining a written authorization from the borrower, shall choose the insurance producer and the insurer that will transact the insurance.

Subsection (4) (a) of said section consists of the following three requirements:

1. the ability to obtain the insurance that will be provided because of the loan may only be delegated through an express mandate.
2. said mandate will expire once the insurance has been transacted through the producer and insurer selected directly or indirectly selected by the creditor.
3. the creditor will not be able to revoke or substitute the selection of producer and insurer that was made by virtue of the original mandate without the borrower's express consent.

In the case a borrower delegates the ability to choose a particular insurance producer or insurer, it is understood that such borrower must stipulate such in writing, and once the creditor has directly or indirectly fulfilled the requirement of obtaining insurance, the creditor will not be able to designate a new agent, broker or insurer without a new written mandate from the borrower.

As an exception to the provisions in subsection (4) (a), subsection (4) (b) of said section provides for the creditor to obtain insurance without the borrower's consent only when there is an indispensable need to protect the interests of any of the parties involved in the credit transaction and efforts to locate the borrower were fruitless since the address of the borrower changed.

The provisions in subsections (4) (a) and (b) will apply to all mandates, including the ones issued before Public Law No. 78, *supra*, was passed, inasmuch as they refer to acts that entail the revocation of the license of the producer or insurer or the substitution of the producer or insurer, as long as they take place after said public law was approved.

Through the new subsection (5) of the section 27.130, *supra*, the Commissioner of Insurance is authorized to investigate the business of any party for which the provisions of said section are applicable and to impose the corresponding sanctions when such provisions are violated.

Public Law No. 78, *supra*, adds the new subsections (6) and (7) to section 27.160 of the Puerto Rico Insurance Code.

The new subsection (6) prohibits a creditor from requiring as a condition to approve a loan that the borrower pays premiums for the insurance policy that covers the voluntary acts of the borrower. Among insurance policies included in such category are conversion, embezzlement, and secretion policies and confiscation coverage, except when the confiscation that is not caused by an act of the borrower.

In order to fully comply with said new provision it is necessary that the insurers amend insurance structures so that the borrower may verify that the premium charged complies with the provisions of law. To this end, this Office will implement an immediate temporary solution to provide the insurance industry and the lending institutions with the time needed to implement permanent solutions. The immediate temporary solution is described below and must be implemented as of January 1, 1988.

With regards to automobile single interest insurance covering physical damage, this Office will require insurers to implement the necessary changes so that the insurance policy, the premium of which shall be paid by the borrower, be offered through a master policy (and certificates) that is separate and different from the policy that covers voluntary acts by the borrower. To this effect, the following procedure will be followed:

1. the insurer shall issue a master policy for the creditor, using the form currently in effect, which will exclusively cover the comprehensive and collision risks; such policy will be assigned a policy number that distinguishes it from the rest of the creditor's policies.
2. the insurer will issue a separate policy that covers conversion, embezzlement, and secretion risks, the premium of which may not be charged to the borrower; such policy will be assigned a policy number that will also distinguish it from the rest of the creditor's policies.
3. in the case of a policy covering comprehensive and collision risks, the certificates of insurance issued in compliance with the law, shall reflect premiums charged solely under such policies. In the case of policies that only cover conversion, embezzlement, and secretions risks, and since the insurable interest and the corresponding premiums are stipulated by the vehicle financing entity, this Office allows the financial institution and the creditor to agree to an internal procedure through which the individual cases that are insured under such policy are identified without having to issue certificates of insurance. Said procedure will not be subject to approval from the Commissioner of Insurance.

However, the procedure for filing and processing claims is still subject to the provisions of Rule 53 of the Regulations of the Puerto Rico Insurance Code.

The immediate temporary solution previously described shall remain in effect until the insurer or its rating organization carries out, with the approval of this Office, the necessary changes in the existing insurance forms so that in the case of insurance in which the policy is paid by the buyer of the vehicles, any reference to policies to which such buyer has no obligation to pay premiums are removed, including confiscation resulting from voluntary acts of the borrower.

It should be noted that the creditors may not deny accepting a dual interest insurance policy provided by the borrower that does not include the conversion, embezzlement, and

secrections coverage since such subsection (6) prohibits that the premium for such insurance be paid by the borrower.

The new subsection (7) added to such section 27.160, is directed mainly at the financing activity of personal or real property in which property insurance is required as part of the transaction.

In general terms, such section prohibits a borrower to be required to find a new policy for the property object of such transaction, if such property is already covered by property insurance. Said section provides for the original creditor to allow the policy currently in effect for such property be amended to cover the insurable interest of a new creditor, without the necessity of finding a new policy for such. Furthermore, it also allows, if necessary, to raise limit of the policy or to add insurance coverage, so that the interest of the new creditor is fully included and covered, under the condition that such creditor approves the insurer that originally issued said policy. If the insurer is rejected, the first creditor will allow the borrower to request the cancellation of the current policy so that said borrower is able to find a new policy that is approved by all parties with an interest in the property, provided that it covers both the insurable interest of the first creditor as well as the interest of every other creditor that are added subsequently to the policy.

Creditors and institutions that lend money for the buying and selling of property, and any other party that demands a property insurance with regards to a credit or financing transaction for personal and real property must send a written notification to their clients, at the time the transaction is carried out, stating that they have the right to not acquire an additional insurance policy for the property, if there is a policy currently in effect for such property already exists.

Through this letter, every financial institution is required to strictly comply with the provisions in sections 27.130 and 27.160 (6) and (7) of the Puerto Rico Insurance Code, as amended, and with this ruling letter.

Our Office will gladly answer any question related to this matter.

Very truly yours,

Singed

Juan Antonio García  
Commissioner of Insurance

cc: Commissioner of Financial Institutions