STORAGE NAME: h0363a.fs
DATE: March 27, 1997

HOUSE OF REPRESENTATIVES
COMMITTEE ON
FINANCIAL SERVICES
BILL ANALYSIS & ECONOMIC IMPACT STATEMENT

BILL #: HB 363

RELATING TO: Premium Finance Agreements

SPONSOR(S): Representative Melvin

STATUTE(S) AFFECTED: Section 627.841, F.S.

COMPANION BILL(S): None

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:
(1) FINANCIAL SERVICES YEAS 12 NAYS 0
(2) FINANCE & TAXATION
(3)
(4)
(5)

I. SUMMARY:

HB 363 proposes to allow premium finance companies to impose a late charge on any installment payment that is not postmarked by its due date, instead of allowing premium finance companies to impose a late charge on any installment payment not received within a five day grace period. The bill is proposed in response to disputes about whether an installment payment was either mailed by the insured or received by the company within the grace period.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Section 627.841, F.S. refers to delinquency, collection, cancellation, check return charges, and attorney's fees with respect to premium finance agreements.

A premium finance agreement is a contract between a premium finance company and an insured. A premium finance agreement works as follows:

- under a premium finance agreement, a premium finance company advances money to an insured in the form of payment of premiums on an insurance contract.
- the insured makes monthly installment payments to the premium finance company that include the amount advanced, interest on the amount advanced, and a service charge that is authorized and limited by law.

Section 627.841, F.S. allows a premium finance agreement to charge a delinquency and collection charge on each installment payment that is in default for a period of five or more days after the due date. The effect is to give an insured a five day grace period within which the insured can mail an installment payment. (The Florida first district court of appeal said in dicta that a payment postmarked within a grace period is made within the grace period. Safeco Ins. Co. v. Oehmig, 305 So.2d 52, 54 (Fla. 1st DCA 1974)).

For example, under Insured A's premium finance agreement with premium finance company B, A's installment payment has a due date of August 5. Insured A has until August 10 to mail the installment payment, before B can charge a late fee.

If a late fee is imposed, it may not exceed ten dollars, or five percent of the delinquent installment payment, whichever is greater. Only one charge may be collected per late installment payment. A premium finance company may not impose or collect such a charge unless, within ten days after the default of the installment payment, the premium finance company mails a notice of the default to both the insured and to any insurance agent named on the premium finance agreement. The notice must give the insured at least ten days to make the installment payment.

According to s. 627.848(1)(a)(1), when an installment payment is past due, the insurance policy may not be canceled until notice of the intent to cancel is mailed to the insured. This notice must be mailed to the insured in not less than ten days after the installment payment is in default. The insured has ten days within receipt of the notice to make the installment payment.

There are an estimated 260 premium finance companies in Florida.

It may be informative to consider how other organizations in the business of collecting payments determine when a payment is delinquent. For example, a consumer finance company loans money, credit, or goods to a borrower. The lender charges interest, computed daily, on the amount loaned. The interest is included in the amount of the borrower's monthly payment. The general practice is a payment received after the due date is late, regardless of whether the payment was postmarked before the due date. There is no grace period. If a payment is late, there is no delinquency fee. Instead, interest accrues for every day the payment is late. There is no set time at which a consumer loan company will or may take action against a delinquent account. The decision to take action is made on a case-by-case basis, depending on the account's history.

A second example looks at Tallahassee's utility payments collection procedure. The city provides an average grace period of ten days after the due date, depending on the number of days in the month. The city looks at the date the payment was received, not the postmark, to determine if the payment was late. If the payment was received one or more days after the grace period, the payment is considered late. If this occurs, the utility service may be cut off, and a fee of $35.90 may be imposed.

B. EFFECT OF PROPOSED CHANGES:

HB 363 changes the method of determining when an installment payment is in default. Instead of allowing premium finance companies to treat any installment payment not received within five days after the due date as late for purposes of imposing a late charge, the bill allows premium finance companies to treat any installment payment that is not postmarked by the installment payment's due date as late.

For example, under Insured A's premium finance agreement with premium finance company B, A's installment payment has a due date of August 5. If the installment payment is not postmarked by August 5, it is considered late, regardless of when B receives the installment payment.

The bill may eliminate the insured's uncertainty as to whether or not an installment payment will be received in time to avoid a late fee. The bill may eliminate disagreements about when the installment payment is received.

Eliminating the five day grace period and making an installment payment in default if it is postmarked after the due date could speed up the notice process by five days, reducing the time within which an insured can make the installment payment.

C. APPLICATION OF PRINCIPLES:

1. Less Government:
Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

HB 363 could increase an insured's responsibility to make premium finance installment payments by their due dates.

HB 363 could reduce a premium finance company's responsibility to determine and keep a record of the date of receipt for installment payments, because the postmark will determine whether the installment payment was late.

(3) any entitlement to a government service or benefit?

N/A.

a. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

None.

(1) what is the cost of such responsibility at the new level/agency?

The insured could lose a five day grace period within which the insured may mail the installment payment.

(2) how is the new agency accountable to the people governed?

N/A.

2. <u>Lower Taxes:</u>

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

The premium finance company's responsibility to open and record an installment payment as soon as the installment payment arrives in the mail could be passed to the insured, in the form of increased responsibility to ensure ability to make and mail the installment payment by the postmark due date. The bill may decrease an insured's options regarding the date by which the insured must make an installment payment to avoid incurring a late charge. The bill increases a premium finance company's options regarding when the company may impose a delinquency and collection charge.

b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

N/A.

(2) Who makes the decisions?

N/A.

(3) Are private alternatives permitted?

N/A.

(4) Are families required to participate in a program?

N/A.

(5) Are families penalized for not participating in a program?

N/A.

b. Does the bill directly affect the legal rights and obligations between family members?

N/A.

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A.

(2) service providers?

N/A.

(3) government employees/agencies?

N/A.

D. SECTION-BY-SECTION ANALYSIS:

None.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

   The number of court cases could increase.

3. Long Run Effects Other Than Normal Growth:

   None.

4. Total Revenues and Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

   None.

2. Recurring Effects:

   None.

3. Long Run Effects Other Than Normal Growth:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

   Indeterminate.

2. Direct Private Sector Benefits:

   The postmark deadline may induce insureds to make installment payments by their due date. Premium finance companies may generate more revenue from delinquency and cancellation charges.

3. Effects on Competition, Private Enterprise and Employment Markets:

   Indeterminate.

D. FISCAL COMMENTS:

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

N/A.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

N/A.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

N/A.

V. COMMENTS:

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The Committee on Financial Services adopted the following amendment:

Amendment 1 by Representative Maygarden removed language from the bill which said that an installment postmarked after the date on which it is due is considered late. Instead of this language, Amendment 1 said that any installment postmarked on or before the due date is a timely payment. The amendment did not change the substance of the bill.

VII. SIGNATURES:

COMMITTEE ON FINANCIAL SERVICES:

Prepared by:	Legislative Research Director:
Hilary E. Coggins	Stephen T. Hogge