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HOUSE OF REPRESENTATIVES
COMMITTEE ON

BILL ANALYSIS & ECONOMIC IMPACT STATEMENT

BILL #: HB 487

RELATING TO: Premium Finance Companies

SPONSOR(S): Representative Dennis

STATUTE(S) AFFECTED: Sections 627.828, 627.848, F.S.

COMPANION BILL(S): None

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:
(1) Financial Services
(2)
(3)
(4)
(5)

I. SUMMARY:

HB 487 will require premium finance companies now authorized to file a surety bond or other collateral in lieu of having a net worth of $35,000, to have a net worth of at least $10,000.

When applying for licensure, a premium finance company will be required to provide evidence, rather than proof, that the company satisfies the net worth requirements. The evidence will be attested to by two officers of the premium finance company.

All premium finance companies will have to have an errors and omissions insurance coverage of no less than $500,000 per claim.

When an insurance contract is canceled, the premium finance company will be required to return any unearned premium and unearned commission to the insured if the policy was for personal lines insurance, and to the agent if the policy was for commercial lines insurance, instead of returning the unearned premium and unearned commission to either the insured or the agent, regardless of whether or not the insurance was personal or commercial.

This bill does not have a fiscal impact.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Section 627.828, F.S. refers to the licensing of premium finance companies. A premium finance company advances money to an insured in the form of payment of premiums on an insurance contract. The premium finance agreement is a written agreement by which an insured promises to pay to a premium finance company the amount advanced, as well as a service charge that is authorized and limited by law. There are an estimated 260 premium finance companies in Florida.

Section 627.828(1) requires premium finance companies to maintain a net worth of $35,000. In lieu of this, a premium finance company can file a surety bond or other collateral acceptable to the DOI in the amount of $35,000. The cost of such a surety bond is generally two percent of the bond's amount. Thus, a $35,000 bond costs $700. Since the beginning of 1997, two premium finance companies have filed for bankruptcy

Section 627.828(2) requires an entity applying for a premium finance company license to provide proof of a net worth of $35,000. In practice, proof of net worth consists of an audit, which costs the premium finance company from $5,000 to $8,000, depending on the auditor.

The statute does not address maintenance of an errors and omissions insurance policy by premium finance companies. Errors and omissions policies insure premium finance companies against bankruptcy. For example, an error and omissions policy would cover a premium finance company if the premium finance company erroneously canceled an insured's insurance policy, an event subsequently occurred for which the insured was uninsured, and the insured sued the premium finance company. Many premium finance companies already have errors and omissions insurance.

A premium finance agreement works as follows:

-- 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 627.848(1)(e), F.S. provides procedure when an insurance policy is canceled:

-- the insurer returns the amount of the unpaid balance due under the finance contract to the premium finance company; and,

-- after satisfying the premium finance agreement, the premium finance company shall return any remaining unearned premium either to the agent or to the insured, for the benefit of the insured. There is no distinction between personal lines and commercial insurance.

If the remaining unearned premium is sent to the agent, the agent is required to return to the insured the amount of the remaining unearned premium, in addition to the amount of the agent's unearned commission. According to the Department of Insurance (DOI), some agents keep the unearned commission. There is a higher incidence of agents keeping unearned commissions on personal lines insurance policies (e.g., auto insurance) than on commercial lines policies (e.g., liability insurance carried by a mall).

B. EFFECT OF PROPOSED CHANGES:

The net worth requirements for premium finance companies filing a surety bond or other collateral in lieu of having $35,000 in net worth will increase. A licensed premium finance company will have to maintain a minimum of $10,000 net worth and file a surety bond or other acceptable collateral approved by the DOI in the amount of $35,000, instead of only filing a $35,000 surety bond with the DOI in lieu of having any net worth.

The surety bond or other acceptable collateral will have to be kept current, meaning a premium finance company cannot file the bond or collateral with the DOI to obtain or maintain the company's license, and then cancel the bond or collateral once the license is renewed.

By allowing a premium finance company applying for a license to provide *evidence* of net worth, instead of *proof* of net worth, the company's costs should decrease. Instead of paying an estimated $5,000 to $8,000 for an annual audit, the premium finance companies will be able to use the results of financial exams, currently performed every three years on premium finance companies by the DOI, as evidence of net worth. There is no cost to the premium finance company for the exam. A financial exam consists of the DOI examining a premium finance company's records to ensure solvency. Two officers of the premium finance company will be required to attest to the evidence.

All licensed premium finance companies will be required to carry an errors and omissions insurance policy of $500,000 per claim.

When an insurance contract is canceled, the required procedure will be as follows:
-- the insurer will be required to return the gross amount available, including unearned premiums, to the premium finance company.
-- after satisfying the premium finance agreement, the premium finance company will have to return any remaining unearned premium to the insured, instead of returning it to the insured or the agent, in the case of personal lines insurance. In the case of commercial insurance, the premium finance company will return remaining unearned premiums to the agent.

C. APPLICATION OF PRINCIPLES:

1. <u>Less Government:</u>

a. 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?

No.

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

No.

b. 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?

N/A.

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

N/A.

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

N/A.

2. Lower Taxes:

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. There is no cost to the premium finance companies for the financial exam by the DOI. There are no implementation costs, as the financial exams are already performed by the DOI.

4. Individual Freedom:

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

Changing the law from requiring proof of net worth to requiring evidence of net worth will allow the premium finance company to choose whether to hire an accountant to audit the company, or whether to avail itself of the financial exam conducted by the DOI.

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

The DOI will probably conduct most or all financial exams that will be used as evidence of net worth, replacing audits conducted by private accountants or accounting firms.

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?

No.

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:

This section need be completed only in the discretion of the Committee.

III. <u>FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT</u>:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

   None.

2. Recurring Effects:

   None.

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:

   The bill would decrease the number of accountants called upon to audit the premium finance companies.

   The bill will prevent a premium finance company with a net worth less than $10,000 from being licensed by the DOI.

2. Direct Private Sector Benefits:

   Premium finance companies will no longer have to pay to be audited for the purpose of proving net worth, since they will be able to rely instead on the financial exam conducted by the DOI as evidence of net worth.

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

   The bill may decrease the number of premium finance companies able to conduct business in Florida by imposing a $10,000 net worth minimum.

D. FISCAL COMMENTS:

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

A. APPLICABILITY OF THE MANDATES PROVISION:

None.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

None.

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

None.

V. COMMENTS:

According to the sponsor, the intent of these sections is to increase the degree of solvency of licensed premium finance companies, and to make it financially easier for premium finance companies to demonstrate such solvency.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

VII. SIGNATURES:

COMMITTEE ON FINANCIAL SERVICES:

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