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

BILL #: CS/HB 487

RELATING TO: Premium Finance Companies

SPONSOR(S): Committee on Financial Services and Representative Dennis

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

COMPANION BILL(S): None

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

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I. SUMMARY:

CS/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 errors and omissions insurance coverage of no less than \$500,000 covering the acts of its officers, employees, and agents. The deductible of the coverage may not exceed two percent of the policy limits. A premium finance company may self-insure the errors and omissions coverage if the premium finance company meets certain criteria, such as having an unencumbered \$15 million net worth. The bill provides for revocation or suspension of a self-insurance certificate if the premium finance company does not comply with the self-insurance requirements.

The bill provides that a premium finance company cannot finance or collect payments for membership in an automobile club relating to maintenance or operation of automobiles, for accidental death and dismemberment insurance, or for any product not regulated under the insurance code.

This bill does not have a fiscal impact.

II. SUBSTANTIVE RESEARCHS:

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 department of insurance (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 insurance code 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.

No premium finance company may finance the cost of membership in an automobile club relating to the operation or maintenance of an automobile, the cost of an accidental death and dismemberment policy, or any product not regulated under the provisions of the insurance code. The third district court of appeal held that the term "financing" does not include collection of funds, thus overturning a Department of Insurance Final Order concluding that Capital National Finance Corporation had engaged in the financing of automobile club memberships by collecting funds used to pay for the membership. Capital National Finance Corp. v. Dept. of Insurance (Fla. 3d DCA 1997).

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 at least \$500,000 covering the acts of its officers, employees, and agents. The deductibles of such a policy may not exceed two percent of the policy limits.

A premium finance company with an unencumbered net worth of \$15 million may self-insure the errors and omissions coverage, as long as the premium finance company maintains a \$15 million net worth, demonstrated annually, and as long as the premium finance company obtains a certificate of self-insurance from the DOI. The DOI will revoke the certification if a premium finance company does not at all times maintain an unencumbered net worth of \$15 million, or the premium finance company does not, in good faith, cover the errors and omissions of its officers, employees, and agents. The DOI may adopt rules regarding premium finance companies self-insuring their errors and omissions coverage.

The bill prohibits a premium finance company from providing for the collection or remittance of dues, fees, or other periodic payments of money for the cost of automobile clubs relating to maintenance and operation of automobiles, accidental death and dismemberment coverage, or any product not authorized by the insurance code.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

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

Yes. The DOI may adopt rules to implement the premium finance company self-insurance requirements, and may revoke or suspend a premium finance company's self-insurance certification if the requirements are not maintained.

(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.

The bill allows premium finance companies that meet certain net worth requirements and certification requirements to self-insure their errors and omissions coverage.

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

Yes. 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.

The bill prohibits premium finance companies from collecting dues, assessments, fees or other payments for the cost of membership in an automobile club, accidental death and dismemberment coverage, or any other product not regulated by the insurance code.

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 RESEARCH:

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

II. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

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.

The bill will prohibit premium finance companies from collecting dues, assessments, and fees for the cost of automobile clubs, accidental death and dismemberment policies, or any product not regulated by the insurance code.

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.

All premium finance companies will have errors and omissions coverage.

Premium finance companies that meet certain net worth and certification requirements will be able to self-insure their errors and omissions coverage.

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:

III. 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.

IV. 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:

CS/HB 487 is different from HB 487 in the following ways:

-- CS/HB 487 requires that the errors and omissions insurance policy provide \$500,000 of coverage for the acts of a premium finance company's officers, employees, and agents, instead of providing \$500,000 per claim.

-- CS/HB 487 provides for self-insurance for premium finance companies meeting certain requirements, whereas HB 487 did not provide for self-insurance.

-- CS/HB 487 prohibits premium finance companies from collecting dues, assessments, and fees for the cost of automobile clubs, accidental death and dismemberment policies, or any product not regulated by the insurance code, while HB 487 did not address such collections.

-- HB 487 provided for the method of returning unearned premiums to insureds and agents upon cancellation of an insurance contract, while CS/HB 487 does not address cancellation of insurance contracts.

VII. SIGNATURES:

COMMITTEE ON FINANCIAL SERVICES:

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