

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 2466

SPONSOR: Senator Diaz de la Portilla

SUBJECT: Premium Finance Companies

DATE: April 8, 2003 REVISED: 4/09/03 _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Emrich</u>	<u>Deffenbaugh</u>	<u>BI</u>	<u>Fav/2 amendments</u>
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

Pursuant to the Insurance Code, consumers may finance their insurance premiums through premium finance companies. Under this financial arrangement, the premium finance company advances money to the consumer in the form of payment of premiums on an insurance contract. Such companies are licensed by the Office of Insurance Regulation and must meet specified net worth and other requirements.

Senate Bill 2466 would revise the definition of a premium finance company to exempt any person who purchases or acquires premium finance agreements from a licensee (premium finance company), if the licensee retains the right to service the agreements, collects payments due under the agreements, and remains responsible for the finance agreements being administered.

The bill amends section 627.826 of the Florida Statutes.

II. Present Situation:

Premium Finance Companies

Premium finance companies are regulated by the Office of Insurance Regulation (OIR) under part XV of ch. 627.¹ Such companies advance money to an insured in the form of payment of premiums on an insurance contract. In turn, the consumer promises to pay to the company the

¹ Effective January 7, 2003, the Department of Insurance was transferred to the Department of Financial Services and to the Office of Insurance Regulation (ch. 2002-404, L.O.F.). The Office of Insurance Regulation (OIR) is responsible for all activities concerning premium financing (s. 21.121(3)(a)1., F.S.). This session, CS/CS/SB 1712 makes conforming changes to the Florida Statutes, including changes to part XV of ch. 627, F.S., to reflect such authority of OIR.

amount advanced, as well as a service charge or other payments that are authorized and limited by law. The fees that premium finance companies may charge consumers include service charges set at a maximum of \$12 per \$100 of premium financed, per year; “set up” charges of \$20 (once annually); delinquency or collection charges of \$10 or 5 percent of the delinquent installment, whichever is greater; attorneys fees (not to exceed 20 percent of the amount due); and charges for insufficient funds of \$15. The OIR may impose penalties for excessive premium finance charges.²

Premium finance companies are licensed by the OIR and such companies must maintain at all times a net worth of \$35,000. However, in lieu of having such a net worth, a company that has a net worth of \$10,000, may file a surety bond or other collateral in the amount of \$35,000. Such entities must also maintain an errors and omissions insurance policy of \$500,000 covering the acts of its officers, employees, or agents. Also, the OIR is authorized to conduct examinations and investigations of such companies.

Premium finance companies are defined to include persons engaged, in whole or in part, in the business of entering into premium finance agreements with insureds; or persons engaged in the business of acquiring premium finance agreements from other premium finance companies.³ Credit unions, banks, savings and loan associations, and other lending institutions defined under chs. 516 (consumer finance), 657 (credit unions), 658 (banks and trust companies), and 655 (financial institutions), or their federally chartered counterparts are exempt from the provisions of ch. 627, part XV, F.S., which regulates premium finance companies and agreements.

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 charges and fees as noted above. On a retail level, premium finance companies are typically involved in lending consumers money in order to pay for automobile insurance premiums. Generally, the consumer pays a certain amount of the premium in the form of a down payment. Many of these transactions are cash transactions. There are an estimated 149 premium finance companies in Florida.

Reportedly, there are national companies that seek to acquire premium finance contracts solely for the purpose of financing the existing agreements. These companies raise money to later loan through premium finance companies via numerous mechanisms, including private placement and securitizations. Florida law currently requires such companies to be licensed as premium finance companies, even though all the loans to customers are being solicited, made, and serviced through the premium finance company that already maintains a Florida premium finance company license.

Under current law, insurance agents, agencies, and insurers which are not licensed as premium finance companies, may assess consumers reasonable service charges for financing insurance premiums on policies issued.⁴ In lieu of a service charge, an agent or insurer may charge a rate of interest not to exceed 18 percent simple interest per year on the unpaid balance. In the event an

² S. 627.835, F.S. The penalty which may be imposed by the OIR is the forfeiture of the entire premium finance charge to which the person or entity would otherwise be entitled, and the person who paid the unlawful charge may sue for recovery for *twice the amount of the premium finance charge so paid*.

³ S. 627.826, F.S.

⁴ SS. 627.901, 627.902, F.S.

agent's or agency's service charge or rate of interest is more than the amounts authorized above, the agent is subject to part XV of ch. 627, F.S., which provides for the regulation of premium finance companies. Further, if an insurer or a subsidiary of an insurer finances property, casualty, surety, and marine insurance premiums on policies issued or business produced by such insurer, and their total service charge or rate of interest is *substantially more* than the specified amounts under s. 627.901, F.S., the insurer is also subject to part XV of ch. 627, F.S.

III. Effect of Proposed Changes:

Section 1. Amends s. 627.826, F.S., relating to the definition of premium finance companies, to provide that the following entities are exempt from the provisions of this part: any person who purchases or acquires premium finance agreements from a licensee, if the licensee retains the right to service the agreements, collects payments due under the agreements, and remains responsible for the finance agreements being administered in compliance with this part. In effect, this provision authorizes an exemption for entities that purchase or acquire premium finance agreements from being subject to the licensure and regulatory provisions of ch. 627, part XV, F.S.

Under this provision, the exempt company would not perform the administrative or servicing of the premium finance agreements because the premium finance company would remain responsible for those functions.

Section 2. Provides that this act shall take effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

A company acquiring premium finance agreements under the conditions described will no longer be required to be licensed as a premium finance company. This legislation could have the effect of making capital and additional funding available to Florida

consumers with the result of making the premium finance market more competitive without requiring unnecessary duplicate company licensing.

C. **Government Sector Impact:**

There is no fiscal impact as to this bill according to the Office of Insurance Regulation.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

#1 by Banking and Insurance:

Provides that it shall not be considered insurance if a telecommunication company, public utility, or water system charges customers for an optional waiver of liability, at the election of the customer, where the entity agrees to waive all or a portion of the customer's liability for service from a defined period, in the event of the customer's death, disability, call to active military service, involuntary unemployment, qualification for family leave, or similar qualifying event.
(WITH TITLE AMENDMENT)

#2 by Banking and Insurance:

Clarifies that the premium finance company must retain the possession of and the legal obligation to service the premium finance agreements and to collect the payments due, if the loan is purchased by a person that is not a licensed premium finance company.