

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Finance and Tax Committee

BILL: SB 1432

INTRODUCER: Senator Storms

SUBJECT: Insurance Premiums

DATE: March 20, 2009 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Woodham</u>	<u>Burgess</u>	<u>BI</u>	Favorable
2.	<u>Johansen</u>	<u>McKee</u>	<u>FT</u>	Pre-meeting
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

Senate Bill 1432 concerns discounts on insurance granted to any insured who pays the entire premium on a policy by the time the policy begins. The discounts in question are commonly known in the insurance industry as Paid in Full Discounts (PIFD). The bill specifies that a PIFD the Office of Insurance Regulation within the Financial Services Commission of the Department of Financial Services (OIR) finds actuarially justified is not disallowed by the parts of the Florida Insurance code relating to premium financing. Nor is any such discount, found actuarially justified by the OIR, related to or a component of premium financing. The parts of the Florida Insurance Code dealing with premium financing are parts XV and XVI of Chapter 627, F.S.

The bill addresses an issue raised in a lawsuit that came before the Second District Court of Appeal.¹ The trial court held that a PFID constitutes a premium financing charge, under part XVI, Chapter 627, F.S., on those who do not receive such discounts.² The Second District Court of Appeal quashed the trial court ruling on summary judgment, and the parties settled out of court. This bill specifies that PFIDs are not governed by parts XV and XVI of ch. 627, F.S.

This bill substantially amends the following sections of the Florida Statutes:
Section 627.902, F.S.

¹ See Progressive Express InSection Co. V. Reaume 937 So.2d 1120 (Fla. 2nd DCA 2006)

² Ibid.

II. Present Situation:

Premium Financing

Premium financing consists of money loaned to an insurer on behalf of a policyholder to help cover the cost of the premium on a policy.

Under part XV, ch. 627, F.S., the OIR³ regulates premium financing companies and agreements. This part:

- defines which entities are lawfully engaged in premium financing;⁴
- imposes licensure requirements upon premium financing companies,⁵ and
- requires premium financing companies possess an errors and omissions policy of \$500,000 “covering the acts of its officer, employees, and agents.”⁶

This part also:

- levies fees on premium financing companies;⁷
- subjects premium financing companies to examinations by OIR, on at least a tri-annual basis;⁸
- requires that premium financing companies submit their relevant forms for OIR approval;⁹ and
- specifies the form and content of the premium finance agreements that can be offered.¹⁰

Premium financing companies are forbidden from financing the following:¹¹

- accidental death and dismemberment policies sold in combination with personal injury protection and property damage only policies;
- automobile club memberships;
- any products not regulated under the Florida Insurance Code.

The policyholder pays for premium financing via service charges as regulated in s. 627.840, F.S. The cumulative service charge shall not exceed \$12 per \$100 of the amount of the premium financed plus an additional \$20.¹² The premium amount on which this calculation is based is determined by the amount to be paid between the inception of the policy and the date “when the final payment of the premium finance agreement is payable,”¹³ minus any down payment made before the policy’s inception.

³Section 627.834, F.S.; also Sections 624.307 and 626.601, F.S. Florida Administrative Rules governing premium finance companies may be found at 69O-196.001-038

⁴Section 627.826(1-2), F.S.

⁵Section 627.828, F.S.

⁶Section 627.828(3)(a), F.S.

⁷Section 627.849, F.S.

⁸Section 627.834(2), F.S.

⁹Section 627.838 and 627.839, F.S.

¹⁰Section 627.839, F.S.

¹¹Section 627.8405, F.S.

¹²Section 627.840(3)(b), F.S.

¹³Section 627.840(3)(a), F.S.

Premium finance companies do not have to gain approval of the OIR before actually imposing the service charges as described above. However, they must file information on those charges with the OIR.¹⁴

Premium Financing by Insurance Companies, Agencies and Agents

Numerous companies exist independently to provide premium financing. However, many insurance companies, agencies, and agents also choose to provide premium financing. These arrangements are regulated under part XVI, ch. 627 F.S.

An insurance company and/or its subsidiary may provide premium financing agreements solely for policies covering:¹⁵

- property;
- surety;
- casualty, and
- marine insurance.

Under part XVI ch. 627, F.S., any insurance company, agency, or agent providing premium finance has two alternative mechanisms to recover service charges. First, they may impose a service charge of not more than \$3 an installment on the premium payment, up to a maximum of \$36 a year.¹⁶ Alternatively, they may charge a simple interest rate, not exceeding 18 percent on the unpaid balance, or the average unpaid balance over the life of the term.¹⁷

Any such company, agency, or agent may collect an additional service charge of \$10,¹⁸ and they may charge the same amount for collection and delinquency fees, insufficient funds charges, and attorney costs as premium finance companies under part XV, ch. 627, F.S.¹⁹ Should the service charges exceed the costs listed above, the company, agency, or agent providing the financing is then subjected to part XV, of ch. 627, F.S.²⁰

Details concerning these agreements must be filed with the OIR; however, OIR approval is not required before the agreements are put into effect. Furthermore these filings are not part of the company's general rate filing.

Rate Filings

Any insurer operating in the state of Florida must submit its rates by which it generates premiums for approval by the OIR. The OIR has this authority generally under ss. 624.307(1)-(6) and 624.308, F.S. Under this statutory mandate, the OIR promulgates legally binding rules in the Florida Administrative Code which govern when and in what manner insurers submit rate filings, and the conditions by which the rates therein are acceptable. In the case of property, casualty, and surety insurance the rate filing process is dealt with under statute in s. 627.062, F.S., and also in s. 627.371, F.S.

¹⁴Section 627.838(2), F.S.

¹⁵Section 627.902, F.S.

¹⁶Section 627.901(1), F.S.

¹⁷Section 627.901(1)(a-b), F.S.

¹⁸Section 627.902, F.S.

¹⁹ Ibid.

²⁰Section 627.901(2) and 627.902, F.S.

Paid in Full Discounts

PIFDs, as they are known in the insurance industry, are given by insurers to policyholders who pay the full premium for a policy at the policy's inception. The discount is not displayed on the policyholder's bill as a line item. Rather, at the legal and regulatory level, the PIFD exists as part of the standard rate determination and rate filing process the company granting the discount performs as specified under the Florida Insurance Code. As such, the PIFD is a reduction in the rate a policyholder would otherwise pay if he or she did not pay the policy premium up front. Accordingly, the OIR must approve the PIFD in the same manner it approves any other element of the rate filing for the company in question. The company that made the filing must demonstrate actuarially that policyholders who pay up front incur fewer losses than policyholders paying a premium on an installment basis.²¹

Legal Challenge

In 2006 the OIR practice in granting Paid in Full Discounts (PIFDs) was challenged in a class action suit²² by an automobile insurance policyholder.²³ The policyholder bringing the suit had purchased a six-month policy for \$884. The policyholder purchased premium financing from the insurer²⁴ and was charged 18 percent interest.²⁵ Consequently, the service charge on the premium financing agreement was \$16.47. If the policyholder in question had paid the entire premium up front her discount would have been \$49 reducing the premium total to \$835. Adding the PIFD amount to the \$16.47 premium financing charge gives a total of \$65.47. In her suit the policyholder argued this figure constituted a 62 percent interest rate on the financing, well in excess of the statutorily allowed 18 percent.²⁶

The trial court found for the policyholder on a motion for summary judgment. The trial judge found that the sum of the PIFD not granted to the plaintiff and the premium financing charge paid by her constituted a violation of s. 627.901(1), F.S. On appeal by the insurer to the 2d DCA the summary judgment was quashed.

In the appellate proceeding the OIR argued in an amicus curiae brief²⁷ that the trial court's ruling should be reversed. The OIR contended, among other grounds that the issue was "a straightforward rate-making question,"²⁸ and therefore the validity of the PIFD before the law is "properly left to the OIR," based on its "statutorily mandated actuarial expertise to make such a

²¹ This understanding of Paid in Full Discounts was offered by proponents of the bill and confirmed by direct discussion with OIR by committee staff.

²² See Progressive Express InSection Co. V. Reaume 937 So.2d 1120 (Fla. 2nd DCA 2006)

²³ Under Section 627.021(d), F.S. automobile insurance is considered casualty insurance thus bringing premium financing agreements for such policies within the authority of parts XV and XVI of ch. 627, F.S. as discussed above. Likewise rate filings by automobile insurers are subject to Section 627.062, F.S.

²⁴ Such agreements covered under part XVI, ch. 627, F.S.

²⁵ See Section 627.901(1), F.S.

²⁶ Initial Brief of Appellant Michelle Reaume, Case No. 2Do7-3275, at page 6 (copy on file with the Senate Banking and Insurance Committee).

²⁷ Brief of Amicus Curiae, the Florida Office of Insurance Regulation, case No.2D05-6007.

²⁸ *Ibid.* pp. 2, 7-12.

determination.”²⁹ When it quashed the original decision the Second District Court of Appeal ruled the policyholder must exhaust her administrative remedies before seeking relief in court.³⁰

III. Effect of Proposed Changes:

Section 1.

Amends s. 627.902 F.S. The bill declares that nothing in parts XV or XVI of ch. 627, F.S. applies when an insurance company grants a discount to a policy holder who pays the entire premium for a policy term when the policy begins so long as the Office of Insurance Regulation finds the discount actuarially justified and approves it under the relevant provisions pursuant to part I of ch. 627, F.S. Furthermore any such discount cannot be considered a component of premium financing or related to premium financing.

Section 2.

Provides an effective date of July 1, 2009.

This bill has two effects. First, the Florida Insurance Code is changed to explicitly specify that nothing in parts XV and XVI, ch. 627, F.S., prevent insurance companies who provide premium financing from applying a lower insurance rate, offered as a discount for their policyholders who pay the full policy premium amount up front, so long as the OIR finds that rate has sound actuarial determination. Second, such a discount to policyholders who pay their policy premium up front, is not to be considered in any way related to premium financing under the Florida Insurance Code.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None. The Revenue Estimating Conference concluded that this legislation has no fiscal impact on state or local government.

²⁹ Ibid. pp. 3, 8-12.

³⁰ See See Progressive Express Ins. Co. V. Reaume 937 So.2d 1120 (Fla. 2nd DCA 2006) esp. p. 4 wherein the Court notes the OIR’s primary jurisdiction over disputes in the setting of insurance rates citing s. 627.371(1), F.S.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.