

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 741

Insurance Premium Financing

SPONSOR(S): Patterson

TIED BILLS:

IDEN./SIM. BILLS: SB 1432

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Insurance, Business & Financial Affairs Policy Committee		Callaway	Cooper
2) General Government Policy Council			
3)			
4)			
5)			

SUMMARY ANALYSIS

Insurance premium financing occurs when a company, known as a premium finance company, advances funds for insurance premium to an insurance company or to an insurance agent on behalf of the policyholder. The premium finance company charges the policyholder a service charge for advancing the premium for the policyholder. The yearly service charge is a maximum of \$12 per \$100 of premium financed plus an additional charge of a maximum of \$20.

Premium financing can also be done by insurance agents, insurance agencies, insurance companies, or subsidiaries of insurance companies. General lines insurance agents financing insurance premiums on insurance policies sold by the agent or agency can charge a service charge of \$3 per installment, up to \$36 a year. Alternatively, the agent or agency can charge simple interest at 18% per year, billed in equal installments, on the unpaid balance of premium or the average unpaid balance of premium over the policy term. Insurance companies or subsidiaries of insurance companies can finance premiums for only property, casualty, surety, and marine insurance policies. The service charge and interest rate insurance companies can charge for premium financing is the same as what can be charged by insurance agents and agencies.

Some insurance companies give insurance premium discounts to their policyholders that pay their insurance premium in full at the beginning of the policy term. If a paid in full discount is given, the policyholder receives the discount as a lower insurance rate; the discount is not a line item reduction in premium on the policyholder's insurance bill. Insurers providing paid in full discounts submit the details about the discount in the rate filing submitted to the Office of Insurance Regulation (OIR) for approval of the company's insurance rates. In order for the discounts to be approved for use by the OIR, the discounts must be based on loss experience of the insurance company and be actuarially supported.

According to the proponents of the bill, some policyholders have argued a paid in full discount should be included in the calculation of the premium finance charge. In cases where the premium difference for those policyholders who pay in installments and those who pay in full and receive a paid in full discount plus the premium financing charges charged by the insurer equal more than the premium financing statutes allow for charges, policyholders allege the insurer is charging an excessive premium finance charge not allowed by law.

The bill specifies that paid in full discounts provided to a policyholder when premium payment is made in full at the beginning of the policy term is not prohibited by the premium financing statutes and is not premium financing as long as the discount is included in an insurance company's rate filing and is determined to be actuarially justified by the OIR in their rate filing review. Accordingly, valid paid in full discounts cannot be included in the calculation of premium finance charges under the premium financing statutes. The bill applies to paid in full discounts given by an insurance company or subsidiary for any line of insurance.

This bill does not appear to have a fiscal impact on state or local governments. Policyholders paying insurance premiums in full at the beginning of the insurance policy's term will continue to receive insurance premium discounts in the form of lower insurance rates in the amount approved by the OIR.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

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HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background on Premium Financing

Parts XV and XVI of chapter 627 relate to insurance premium financing and set forth the requirements and restrictions for premium financing. Insurance premium financing occurs when a company, known as a premium finance company, advances funds for insurance premium to an insurance company or to an insurance agent on behalf of the policyholder. The premium finance company charges the policyholder a service charge for advancing the premium for the policyholder. The yearly service charge is a maximum of \$12 per \$100 of premium financed plus an additional charge of a maximum of \$20.¹

Premium financing companies are regulated by the Office of Insurance Regulation (OIR). The company must obtain a license to operate from the OIR. According to the OIR, there are 88 licensed premium finance companies. To be licensed, premium finance companies must meet net worth requirements², must have an errors and omission policy³, must submit to examinations at least every three years by the OIR⁴, must file an annual report with the OIR⁵, must obtain approval of the forms related to premium finance from the OIR prior to use⁶, and must abide by administrative rules promulgated by the OIR.⁷ The premium finance company does not have to obtain approval from the OIR to charge the service charge for premiums financed but must file such information with the OIR.⁸

Automobile club membership, an accidental death and dismemberment policy sold in combination with a personal injury protection and property damage only policy, and any product not regulated under the Insurance Code cannot be financed by a premium finance company.⁹

Premium financing can also be done by insurance agents, insurance agencies, insurance companies, or subsidiaries of insurance companies. General lines insurance agents¹⁰ financing insurance premiums on insurance policies sold by the agent or agency can charge a service charge of \$3 per

¹ s. 627.840(3), F.S. (2008).

² s. 627.828(1), F.S. (2008).

³ s. 627.828(2), F.S. (2008).

⁴ s. 627.834, F.S. (2008).

⁵ s. 627.836, F.S. (2008).

⁶ s. 627.838, F.S. (2008).

⁷ The administrative rules governing the activity of premium finance companies are found at 69O-196.001-.038, F.A.C.

⁸ s. 627.838(2), F.S. (2008).

⁹ s. 627.8405, F.S. (2008). The Insurance Code consists of chapters 624-632, 634-636, 641-642, 648, and 651.

¹⁰ General lines agents are defined in s. 626.015, F.S. These agents are only authorized to transact property, casualty, surety, health, and marine insurance.

installment, up to \$36 a year. Alternatively, the agent or agency can charge simple interest at 18% per year, billed in equal installments, on the unpaid balance of premium or the average unpaid balance of premium over the policy term.¹¹

Insurance companies or subsidiaries of insurance companies can finance premiums for only property, casualty, surety, and marine insurance policies.¹² Insurers engaging in premium financing must file their premium finance agreements and details about the service charge and interest with the OIR but do not have to obtain approval from the OIR for their use. The premium finance information is filed separately from the insurers' rate filing information. The service charge and interest rate insurance companies can charge for premium financing is the same as what can be charged by insurance agents and agencies (i.e. \$3 per installment with a cap of \$36 a year or simple interest at 18% a year). Insurance companies, however, can charge an additional charge of up to \$10 and can charge the same amounts for delinquency and collection charges, attorney's fees, and insufficient funds as premium finance companies.

Paid in Full Discounts on Insurance Premiums

Some insurance companies give insurance premium discounts to their policyholders that pay their insurance premium in full at the beginning of the policy term.¹³ If a paid in full discount is given, the policyholder receives the discount as a lower insurance rate; the discount is not a line item reduction in premium on the policyholder's insurance bill. Insurers providing paid in full discounts submit the details about the discount in the rate filing submitted to the OIR for approval of the company's insurance rates. In order for the discounts to be approved for use by the OIR, the discounts must be based on loss experience of the insurance company and be actuarially supported. For example, if the insurance company can prove to the OIR with actuarial data their policyholders paying premiums in installments have more claims and result in more losses than the policyholders paying premiums in full, then the OIR will approve use of a paid in full discount.

According to the proponents of the bill, some policyholders have argued a paid in full discount should be included in the calculation of the premium finance charge. In cases where the premium difference for those policyholders who pay in installments and those who pay in full and receive a paid in full discount plus the premium financing charges charged by the insurer equal more than the premium financing statutes allow for charges, policyholders allege the insurer is charging an excessive premium finance charge not allowed by law. In fact, at least one class action lawsuit was filed by an automobile insurance policyholder on this issue.¹⁴

In that suit, the auto policyholder's premium for six months was \$884. Had the policyholder paid in full, she would have received a paid in full discount of \$49 reducing her premium to \$835. In addition to the premium, the insurer charged the policyholder 18% interest on the unpaid balance of the auto premium as allowed by the premium financing statute. This charge amounted to \$16.47. Thus, the policyholder paid a total of \$65.47 more for her auto insurance than a policyholder who paid the premium in full. The policyholder contended this amounted to a charge of over 62% in interest on her auto premium and in excess of the 18% interest statutory limit on premium financing charges.¹⁵

Ruling on a motion for summary judgment filed by the policyholder, the trial court held the auto insurer was charging premium financing charges in excess of the allowed statutory amount. In making this conclusion, the trial judge added the difference in premiums paid by policyholders paying in installments and policyholders paying in full and receiving a paid in full discount to the premium finance charges charged by the insurer for the policyholder paying premiums in installments and determined the amount was more than the 18% interest amount allowed by statute.

¹¹ s. 627.901, F.S. (2008).

¹² s. 627.902, F.S. (2008).

¹³ According to information received from proponents of the bill, at least ten insurers currently give paid in full discounts. The insurers are: Progressive, Allstate, AIG, Bristol West, Infinity, GMAC, Esurance, Safeco, Mercury, and United Auto. These insurers give paid in full discounts on automobile policies only. The OIR cannot readily determine how many insurers currently give paid in full discounts. The discounts are currently only given on automobile insurance according to the OIR.

¹⁴ See Progressive Express Ins. Co. v. Reaume, 937 So.2d 1120 (Fla. 2nd DCA 2006).

¹⁵ Initial Brief of Appellant Michelle Reaume, Case No. 2D07-3275, at page 6 (on file with Insurance, Business & Financial Affairs Policy Committee).

The auto insurer appealed the case to the Second District Court of Appeal. The Second District Court of Appeal quashed the circuit court's decision and granted the insurer's petition for writ of certiorari. The OIR appeared as amicus curiae in the appeal. The OIR argued the trial court did not have jurisdiction over the issue and jurisdiction belonged solely to the OIR because the issues raised were ratemaking ones and the OIR has special expertise in ratemaking.¹⁶ On the issue of the inclusion of a paid in full discount in the calculation of premium finance rates, the OIR opined the increased rate the policyholder paid due to her not qualifying for a paid in full discount was actuarially justified because the insurer demonstrated in their rate filing claim losses were increased for policyholders who pay in installments.¹⁷ According to the OIR, if the OIR does not approve a paid in full discount and the rates for all policyholders of an insurance company are equal, then the rate approved by the OIR would be unfairly discriminatory to those policyholders that pay premium in full and have demonstrated lower claim losses and Florida law does not allow the OIR to approve unfairly discriminatory insurance rates.¹⁸ In the case on appeal, the OIR argued the paid in full discount was a component of the insurer's rates and not premium financing and thus not included in the calculation of an excessive premium finance charge.¹⁹

In its opinion granting the insurer's petition for writ of certiorari, the Second District Court of Appeal held the policyholder was required to exhaust her administrative remedies and first seek relief with the OIR before pursuing her claim in court because the law requires persons aggrieved by a charged insurance rate, rating plan, rating system, or underwriting rule to file a written complaint with the OIR.²⁰ In the case, the policyholder did not file a complaint with the OIR before she filed suit in circuit court. The Second District Court of Appeal did not rule on the merits of the policyholder's argument that the difference in premium for policies where the premium is paid in full at the policy start and those where the premium is paid in installments over the term of the policy should be considered in the calculation of premium finance charges. The case was appealed by the policyholder to the Florida Supreme Court which refused to accept jurisdiction of the case.

The policyholder then pursued her administrative remedies as directed by the Second District Court of Appeal. In this regard, the policyholder filed a complaint with the OIR challenging the insurer's calculation of premium financing charges. The OIR did not find probable cause showing a violation of the Insurance Code by the insurer. The OIR stated in its ruling that it believed the insurer's "paid-in-full discount rate is a component of the insurer's total premiums pursuant to Chapter 627, Part I, Florida Statutes, and not a premium finance charge assessed on insureds."²¹ The policyholder appealed the OIR ruling to the Second District Court of Appeal. The policyholder and the insurer settled the case during the pendency of this appeal and the appeal was dismissed.

Effect of Proposed Changes

The bill specifies that paid in full discounts provided to a policyholder when premium payment is made in full at the beginning of the policy term is not prohibited by the premium financing statutes and is not premium financing as long as the discount is included in an insurance company's rate filing and is determined to be actuarially justified by the OIR in their rate filing review. Accordingly, valid paid in full discounts cannot be included in the calculation of premium finance charges under the premium financing statutes. The bill applies to paid in full discounts given by an insurance company or subsidiary for any line of insurance.

¹⁶ The OIR used the primary jurisdiction doctrine to support this argument. This doctrine acknowledges the judiciary must take advantage of an agency's specialized knowledge, expertise and central position within a regulatory regime. Once the court acknowledges the agency's expertise, it should refrain from interfering with an agency's decision-making process. See Brief of Amicus Curiae, the Florida Office of Insurance Regulation, Case No. 2D05-6007 at pps. 5-7 (on file with Insurance, Business & Financial Affairs Policy Committee).

¹⁷ Brief of Amicus Curiae, the Florida Office of Insurance Regulation, Case No. 2D05-6007 at pps. 13-15.

¹⁸ s. 627.0651, F.S. (2008). See Brief of Amicus Curiae, the Florida Office of Insurance Regulation, Case No. 2D05-6007 at pg. 10, pg 12.

¹⁹ Brief of Amicus Curiae, the Florida Office of Insurance Regulation, Case No. 2D05-6007 at pps. 13-14.

²⁰ s. 627.371(1), F.S. (2008).

²¹ Initial Brief of Appellant Michelle Reaume, Case No. 2D07-3275, at page 12.

B. SECTION DIRECTORY:

Section 1: Amends s. 627.902, F.S. relating to premium financing by an insurer or subsidiary.

Section 2: Provides an effective date of July 1, 2009.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Policyholders paying insurance premiums in full at the beginning of the insurance policy's term will continue to receive insurance premium discounts in the form of lower insurance rates in the amount approved by the OIR.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None provided in the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The OIR was asked whether the bill's applicability to all lines of insurance was problematic and the OIR did not express any concern to Insurance, Business & Financial Affairs Policy Committee staff relating to the applicability of the bill to all lines of insurance.²²

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

None.

²² Telephone conversation with a representative of the OIR by Insurance, Banking, & Financial Affairs Policy Committee staff on March 3, 2009.