

No. 1984-224

AN ACT

SB 901

Providing for the licensing of insurance premium finance companies and the regulation of insurance premium finance agreements; establishing rates of interest and service charges; regulating the cancellation of policies of insurance for nonpayment of an insurance premium finance loan; imposing certain powers and duties upon the Insurance Commissioner; and providing for penalties.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Short title.

This act shall be known and may be cited as the Insurance Premium Finance Company Act.

Section 2. Definitions.

The following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:

“Commissioner.” The Insurance Commissioner of the Commonwealth.

“Insurance premium finance agreement.” An agreement by which an insured or prospective insured promises to pay to an insurance premium finance company the amount advanced or to be advanced under the agreement to an insurer or to an insurance agent or broker in payment of premiums and related loss prevention services of an insurance contract together with interest and a service charge as authorized and limited by this act.

“Insurance premium finance company.” A person engaged in the business of entering into insurance premium finance agreements.

“Licensee.” An insurance premium finance company holding a license issued under this act.

“Person.” Includes an individual, partnership, association, business corporation, nonprofit corporation, common law trust, joint-stock company or any other group of individuals however organized.

Section 3. License required.

(a) General rule.—No person shall engage in the business of an insurance premium finance company in this Commonwealth without first being so licensed by the commissioner. Any solicitation or communication, verbal or written, offering an insurance premium finance agreement and originating outside this Commonwealth but forwarded to and received in Pennsylvania by a resident of Pennsylvania shall be construed as doing business within this Commonwealth.

(b) Fee.—The annual license fee shall be \$200. Licenses may be renewed from year to year as of July 1 of each year upon payment of the fee of \$200. The fee for the license shall be paid to the Insurance Commissioner.

(c) Disclosure by applicant.—The commissioner shall have authority, at any time, to require the applicant fully to disclose the identity of all stock-

holders, partners, officers and employees and he may, in his discretion, refuse to issue or renew a license in the name of any firm, partnership or corporation if he is not satisfied that any officer, employee, stockholder or partner thereof who may materially influence the applicant's conduct meets the standards of this act.

(d) Exemption from coverage under this act.—The following persons, when engaged in the business of an insurance premium finance company subject to the provisions of this act, shall not be required to obtain a license under this section and shall be exempt from the provisions of this act:

(1) Banks, bank and trust companies and savings banks which are Federally chartered or chartered by the Commonwealth of Pennsylvania.

(2) Savings and loan associations which are Federally chartered or chartered by the Commonwealth of Pennsylvania.

(3) Consumer discount companies licensed by the Commonwealth under the terms of the act of April 8, 1937 (P.L.262, No.66), known as the Consumer Discount Company Act.

(4) Insurance companies, associations or exchanges authorized to do an insurance business in this Commonwealth under the terms of the act of May 17, 1921 (P.L.682, No.284), known as The Insurance Company Law of 1921, which engage in the financing of their own sales.

(5) Secondary mortgage loan companies licensed by this Commonwealth under terms of the act of December 12, 1980 (P.L.1179, No.219), known as the Secondary Mortgage Loan Act.

(6) Credit unions which are Federally chartered or chartered by the Commonwealth of Pennsylvania.

(7) Sales finance companies licensed under the act of June 28, 1947 (P.L.1110, No.476), known as the Motor Vehicle Sales Finance Act.

(8) Holders of retail installment contracts or installment accounts executed, incurred or entered into by a retail buyer in conformity with the act of October 28, 1966 (1st Sp.Sess., P.L.55, No.7), known as the Goods and Services Installment Sales Act.

(9) Home improvement contractors or financing agencies extending credit pursuant to the act of August 14, 1963 (P.L.1082, No.464), known as the Home Improvement Finance Act.

Section 4. Issuance and renewal of license.

(a) Procedure.—Upon the filing of an application, in a form to be specified by the commissioner, and the payment of the license fee, the commissioner shall make an investigation of each applicant and shall issue a license if the applicant is qualified in accordance with this act. The applicant shall make answer in writing and under oath to such interrogatories and on such forms as the commissioner shall prescribe. If the commissioner does not so find, he shall, within 60 days after he has received the application, at the request of the applicant, give the applicant a full hearing.

(b) Requirements.—Before the commissioner shall issue or renew a license, he shall be satisfied that the person to be licensed:

(1) Is competent and trustworthy and intends to act in good faith in the capacity involved by the license applied for.

(2) Has a good business reputation and the individuals, officers, members or other individuals connected with or doing business for an applicant have experience, training or education so as to be qualified in the business for which the license is applied for.

(3) If a corporation, is a corporation incorporated under the laws of this Commonwealth or a foreign corporation authorized to transact business in this Commonwealth.

(c) Net worth.—Before the commissioner shall issue or renew any license under this act, he shall ascertain that the applicant has and maintains net worth equal to \$50,000, as shall be certified and sworn to by the applicant on a form promulgated by the commissioner.

Section 5. Revocation or suspension of license; appeal.

(a) General rule.—The commissioner may revoke or suspend the license of any insurance premium finance company when and if after investigation it appears to the commissioner that:

- (1) any license issued to the company was obtained by fraud;
 - (2) there was any misrepresentation in the application for the license;
 - (3) the holder of the license has otherwise been shown to be untrustworthy or incompetent to act as an insurance premium finance company;
- or

(4) the company has violated any of the provisions of this act.

(b) Procedure.—Before the commissioner shall revoke, suspend or refuse to renew the license of any insurance premium finance company, the aggrieved person shall be entitled to a hearing in accordance with the provisions of 2 Pa.C.S. Ch.5 (relating to practice and procedure). In lieu of revoking or suspending the license for any of the causes enumerated in this section, after hearing, the commissioner may subject the company to a civil penalty of not more than \$1,000 for each and every act in violation of this statute when in his judgment he finds that the public interest would not be harmed by the continued operation of the company. The penalty shall be paid by the company to the commissioner.

(c) Hearing.—If the commissioner refuses to issue to any person, a license as an insurance premium finance company, or he revokes, suspends or refuses to renew the license of any insurance premium finance company or he imposes a penalty on the company, after a hearing as provided under subsection (b), the applicant or licensee may appeal from the refusal to issue a license or from the adjudication in accordance with 2 Pa.C.S. Ch.7 (relating to judicial review).

(d) Companies subject to Unfair Insurance Practices Act.—In addition to any other laws that may be applicable, insurance premium finance companies are subject to the provisions of the act of July 22, 1974 (P.L.589, No.205), known as the Unfair Insurance Practices Act.

Section 6. Licensee's books and records.

(a) Examination by commissioner.—Every licensee shall maintain and make available all books, records, accounts and other files of its premium finance transactions and such records shall be made available for examination and investigation by the commissioner or his representative. The com-

missioner may at any time during regular business hours examine the records at any location at which the records are maintained.

(b) Preservation of records, etc.—Every licensee shall preserve all books, records, accounts and other files of the insurance premium finance transactions, including cards used in a card system, if any, for at least three years after making the final entry in respect to any insurance premium finance agreement. The preservation of records in photographic form shall constitute compliance with this requirement.

Section 7. Form of insurance premium finance agreement.

(a) Contents.—An insurance premium finance agreement shall:

(1) Be dated and signed by or on behalf of the insured, and the printed portion thereof shall be in at least eight-point type.

(2) Be dated and signed by the agent or broker, if any, executing such agreement.

(3) Contain the name and principal place of business of the insurance agent negotiating the related insurance contract, the name and residence or the place of business of the insured as specified by him, the name and place of business of the insurance premium finance company to which payments are to be made, a brief description of the insurance contracts involved and the amount of the premium therefor.

(4) Comply with all applicable standards set forth in the Federal Truth in Lending Act (15 U.S.C. § 1601 et seq.).

(b) Approval of form.—The form of an insurance premium finance agreement shall be one which has been submitted to the commissioner for his review and approved by him for use. The commissioner shall approve or disapprove a form within 30 days from the date of its submittal. If the commissioner should fail to act within this time period, the form, as submitted, shall be deemed approved.

(c) Agreement period.—An insurance premium finance agreement shall be for a period of time no longer than the term of the policy, but in no event to exceed three years.

(d) Prohibited terms.—No insurance premium finance agreement shall contain any of the following terms:

(1) A provision that, in the absence of default of the insured, the insurance premium finance company holding the agreement may, arbitrarily and without reasonable cause, accelerate the maturity of any part or all of the amount owing thereunder.

(2) A power of attorney to confess judgment in this Commonwealth.

(3) A waiver by the insured of any right of action against the insurance premium finance company, any holder of an insurance premium finance agreement or any person acting on behalf of either, for any violation of this act or other wrongful act committed in the enforcement of the contract or agreement.

(4) A provision that the seller or holder of the contract, or any person acting on his behalf, is given authority to take a mortgage or other security against residential real estate of the buyer or any other obligee to the contract.

Section 8. Limitation on interest and other charges.

(a) Limitations.—An insurance premium finance company shall not charge, contract for, receive or collect an interest charge other than as permitted by this act.

(b) Calculation of interest.—The interest is to be computed on the balance of the premiums due (after subtracting the down payment made by the insured in accordance with the insurance premium finance agreement) from the effective date of the insurance coverage, for which the premiums are being advanced, to and including the date when the final installment of the insurance premium finance agreement is payable.

(c) Limits on interest.—The interest shall not exceed the interest rate as permitted for a retail installment sales contract as provided in the act of October 28, 1966 (1st Sp.Sess., P.L.55, No.7), known as the Goods and Services Installment Sales Act, plus an additional service charge of \$10 per insurance premium finance agreement which need not be refunded upon cancellation or prepayment. If the insurance policy whose premiums are being financed is for other than personal, family or household purposes then the interest shall be at the rate agreed to by the parties and stated in the premium finance agreement. The interest permitted by this subsection anticipates repayment in consecutive monthly installments equal in amount for a period of one year. For repayment in greater or lesser periods or in unequal, irregular or other than monthly installments, the interest may be computed at an equivalent effective rate having due regard for the installments as scheduled.

(d) Refunds.—Notwithstanding the provisions of any insurance premium finance agreement, any insured may prepay the obligation in full at any time. In that event, he shall receive a refund credit, which refund credit shall be computed pursuant to the actuarial method. Actuarial method means the method of allocating payments made on a debt between the amount financed and the finance charge pursuant to which a payment is applied first to the accumulated finance charge and any remainder is subtracted from the unpaid balance of the amount financed. Where the amount of the refund credit is less than \$1, no refund need be made.

Section 9. Delinquency and cancellation charges.

An insurance premium finance agreement may provide for the payment by the insured of a delinquency charge of \$1 to a maximum of 5% of the delinquent installment on any installment which is in default for a period of five days or more.

Section 10. Cancellation of insurance contract upon default.

(a) Procedure.—When an insurance premium finance agreement contains a power of attorney enabling the insurance premium finance company to cancel any insurance contract or contracts listed in the agreement, the insurance contract or contracts shall not be canceled by the insurance premium finance company unless the cancellation is effectuated in accordance with this section.

(b) Written notice.—Not less than 15 days' written notice shall be mailed to the insured, at his last known address as shown on the records of the insurance premium finance company, of the intent of the insurance premium

finance company to cancel the insurance contract or contracts unless the default is cured within such 15-day period.

(c) Curing default.—In the event that after giving the prescribed notice, the default is not cured within the 15-day period, the insurance premium finance company may cancel the insurance contract or contracts by mailing a notice of cancellation to the insurer. The insurance contract shall be canceled as if the notice of cancellation had been submitted by the insured himself but without requiring the return of the insurance contract. The insurance premium finance company shall also mail a notice of cancellation to the insured at his last known address as shown on the records of the insurance premium finance company.

(d) Statutory, regulatory and contractual restrictions.—All statutory, regulatory and contractual restrictions providing that the insurance contract may not be canceled unless notice is given to a governmental agency, mortgagee or other third party shall apply where cancellation is effected under the provisions of this section. The insurer shall determine the effective date of cancellation taking into consideration the number of days' notice required to complete the cancellation. The insurer shall not be required to send the insured any notice of cancellation when the insurance policy is canceled by an insurance premium finance company pursuant to the terms of this section.

Section 11. Return premiums.

Whenever a financed insurance contract is canceled, the insurer shall return whatever gross unearned premiums are due under the insurance contract to the insurance premium finance company for the account of the insured or insureds as soon as reasonably possible, but in no event shall the period for payment exceed 60 days after the effective date of cancellation. In the event that the crediting of return premiums to the account of the insured results in a surplus over the amount due from the insured, the insurance premium finance company shall refund such excess to the insured within ten days of receipt of the returned premium from the insurer provided that no refund shall be required if it amounts to less than \$1.

Section 12. Exemption from any filing requirements.

No filing of the insurance premium finance agreement shall be necessary to perfect the validity of such agreement as a secured transaction as against creditors, subsequent purchasers, pledgees, encumbrancers, successors or assigns.

Section 13. Penalties for violations.

(a) Violation of act.—Any insurance premium finance company or insurer, agent or broker who willfully and knowingly violates this act commits a misdemeanor of the third degree.

(b) Unlicensed business.—Any person who engages in the business of entering into insurance premium finance agreements without having a valid license under this act commits a misdemeanor of the third degree.

Section 14. Regulations.

The commissioner shall have the authority to adopt, amend or repeal such rules and regulations as are reasonably necessary for the administration and enforcement of the provisions of this act.

Section 15. Effective date.

This act shall take effect in 60 days.

APPROVED—The 19th day of December, A. D. 1984.

DICK THORNBURGH