

Insurance

CHAPTER 59A

INSURANCE PREMIUM FINANCE COMPANIES

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59A.01 CITATION.

Sections 59A.01 to 59A.15 may be cited as "the insurance premium finance company act."

History: 1974 c 353 s 1

59A.02 DEFINITION.

Subdivision 1. For the purposes of sections 59A.01 to 59A.15, the words, terms and phrases defined in this section have the meanings ascribed to them except where the context clearly indicates a different meaning.

Subd. 2. "Insurance premium finance agreement" means an agreement by which an insured or prospective insured promises to pay to a premium finance company or to its assignee the amount advanced or to be advanced under the agreement to an insurer or to an insurance agent or broker in payment of premiums on an insurance policy together with a service charge. Any agreement to finance premiums is a premium finance agreement if an insurance policy, other than a life or disability insurance policy, is made the security or collateral for the repayment of the debt incurred under the agreement. Provided, however, an agreement to finance premiums for insurance which is included in a retail installment transaction or purchased in connection with a real estate transaction, mortgage, deed of trust or other security agreement is not a premium finance agreement. Provided further, that an agreement by an insurance company to finance policies written by itself or by companies other than itself or its parent company, its subsidiaries or companies with which it shares a common parent company is not a premium finance agreement.

Subd. 3. "Licensee" means a person licensed by the commissioner to engage in the business of insurance premium financing.

Subd. 4. "Commissioner" means the commissioner of commerce.

History: 1974 c 353 s 2; 1983 c 289 s 114 subd 1; 1984 c 655 art 1 s 92

59A.03 LICENSES; PENALTY.

Subdivision 1. No person other than a savings and loan association, bank, savings bank, trust company, small loan company, industrial loan and thrift company, credit union or resident insurance agent who, within 15 days after entering into an insurance premium finance agreement, transfers such agreement to a licensee or to any of the organizations exempt under this subdivision may engage in the business of entering into, acquiring or holding insurance premium finance agreements unless licensed to do so by the commissioner. A violation of this subdivision is a misdemeanor.

Subd. 2. The applicant at the time of making application, shall pay to the commissioner the sum of \$250 as a fee for investigating the application, and the

additional sum of \$100 as an annual licensee fee for a period terminating on May 31 of each year. In addition to the annual license fee, every licensee shall pay to the commissioner the actual costs of each examination as may be required to be conducted under the terms of sections 59A.01 to 59A.15.

Subd. 3. The person to whom the license or the renewal thereof may be issued shall file sworn answers to such interrogatories as the commissioner may require. The commissioner shall have authority, at any time, to require the applicant to fully disclose the identity of all stockholders, partners, officers and employees and he may, in his discretion, refuse to issue or issue 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 sections 59A.01 to 59A.15.

History: 1974 c 353 s 3; 1976 c 2 s 34; 1976 c 111 s 1

59A.04 ACTION BY COMMISSIONER ON APPLICATION.

Subdivision 1. Upon the filing of an initial application and the payment of the license fee, the commissioner shall make an investigation of each applicant. If a license has not been issued within 30 days after receipt of the application the commissioner shall, at the request of the applicant, give the applicant a full hearing.

Subd. 2. The commissioner shall issue or renew a license when he is satisfied that the person to be licensed:

(a) Is competent and trustworthy and intends to act in good faith in the financing of insurance premiums;

(b) Has a good business reputation and has had experience, training or education so as to be qualified in financing insurance premiums; and

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

History: 1974 c 353 s 4

59A.05 REVOCATION AND SUSPENSION OF LICENSES.

The commissioner may after a hearing revoke, suspend, or refuse to renew the license of any licensee if it appears to the commissioner that:

(a) The license was obtained by fraud;

(b) There was any misrepresentation in the application for the license;

(c) The holder of the license has otherwise shown himself untrustworthy or incompetent to finance insurance premiums, or is involved in any fraudulent, dishonest or deceptive practice; or

(d) The licensee has violated any of the provisions of sections 59A.01 to 59A.15 or rules adopted pursuant to sections 59A.01 to 59A.15.

History: 1974 c 353 s 5

59A.06 BOOKS AND RECORDS.

Subdivision 1. Every licensee shall maintain records satisfactory to the commissioner of its premium finance transactions. The records shall be open to examination and investigation by the commissioner at any time during ordinary business hours. The commissioner may, at any time, require any licensee to bring these records to the commissioner's office for examination.

Subd. 2. Every licensee shall preserve its records of premium finance transactions for at least three years after making the final entry in respect to any premium finance agreement. The records may be preserved in photographic form.

Subd. 3. The commissioner shall make an examination of the affairs, business, office and records of each licensee at least once each year. Each licensee shall pay to the commissioner the actual costs of examination as well as amounts required under section 46.131, and the commissioner may maintain an action for the recovery of such costs in any court of competent jurisdiction.

Subd. 4. Each licensee shall annually before March 15 file a report under oath with the commissioner, in the form he prescribes, giving information as required concerning the business and operations of each licensed place of business during the preceding year. The commissioner shall make and publish annually an analysis and recapitulation of the reports.

History: 1974 c 353 s 6; 1976 c 26 s 1

59A.07 POWER TO MAKE RULES.

The commissioner shall promulgate any rules and regulations which may be necessary to the administration of sections 59A.01 to 59A.15.

History: 1974 c 353 s 7

59A.08 PREMIUM FINANCE AGREEMENTS.

Subdivision 1. A premium finance agreement shall:

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

(b) Contain the name and place of business of the insurance agent or insurance broker 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 premium finance company to which installments or other payments are to be made, a description of the insurance contracts including the term and type of policy, the premiums for which are advanced or are to be advanced under the agreement and the amount of the premiums therefor; and

(c) Set forth the following items where applicable:

(1) The total amount of the premiums,

(2) The amount of the down payment,

(3) The balance of premiums due, the amount financed (the difference between items (1) and (2)),

(4) The amount of the finance charge,

(5) The amount of the flat service fee,

(6) The total of payments (sum of items (3), (4) and (5)).

Subd. 2. The items set forth in subdivision 1, clause (c) need not be stated in the sequence or order in which they appear and additional items may be included to explain the computations made in determining the amount to be paid by the insured.

Subd. 3. The information required by subdivision 1 shall only be required in the initial insurance premium finance agreement entered into if said agreement is open end. An insurance premium finance agreement is open end if it provides that additional or subsequent insurance premiums may be financed and added to the initial insurance premium finance agreement from time to time.

Additional or subsequent premiums may be added to an open end insurance premium finance agreement from time to time, provided that:

(a) The additional or subsequent insurance premium to be added results from additional premiums required under policies presently being financed under the open end insurance premium finance agreement or from a renewal of a policy or from other policies owned or purchased by the insured.

(b) The insurance premium finance company receives written notice or advice from an insurer authorized to do business in this state or from an insurance agent licensed in this state acknowledging that the premium on an existing financed policy has been increased or that a policy has been renewed or that additional policies have or will be issued to the insured. The notice or advice shall contain the amount of the additional premium, the down payment collected by the insurer or agent, if any, and the amount of premium to be added to the open end insurance premium finance agreement.

(c) If the additional premiums to be added to the open end insurance premium finance agreement result from additional premiums required on policies presently financed under the agreement which are to be financed beyond the scheduled maturity of the original financing, the renewal of a policy or from an additional policy owned or purchased by the insured, the insurance premium finance company shall mail a notice to the insured at the address shown in the policy. Said notice shall contain:

(1) The information required by subdivision 1, notwithstanding that the notice is not signed by, nor on behalf of the insured;

(2) A conspicuous statement to the insured stating that he may tender the premiums in full or disaffirm the financing of the premium on the renewal or additional policies by mailing to the insurance premium finance company notice of his intention to do so within ten days after the insurance premium finance company mails to the insured the notice required by this subdivision;

(3) A conspicuous statement to the insured that the insurance premium finance company may, in event of default in payment of the additional premium, or any installment thereof, cause the insured's insurance contract or contracts to be cancelled as provided in section 59A.11.

(d) At the time the notice of additional premium to be added to the open end insurance premium finance agreement is mailed to the insured as provided in clause (c), an employee of the insurance premium finance company shall prepare and sign a certificate or affidavit of mailing setting forth the following:

(1) The name of the employee who mailed the notice of the additional premium to be financed.

(2) That the employee mailing the notice is over 18 years of age.

(3) The date and place of the deposit of the notice in the mail.

(4) The name and address of the person to whom the notice was mailed as shown on the envelope containing the notice.

(5) That the envelope containing the notice was sealed and deposited in the mail with the proper postage thereon.

A certificate or affidavit of mailing, prepared and signed as prescribed in this subdivision shall raise rebuttable presumption that the notice was mailed to the insured at the address shown in the certificate or affidavit of mailing.

(e) The insurance premium finance company may make a finance charge in accordance with section 59A.09 for additional premiums financed and added to an open end insurance premium finance agreement; however, only one flat rate service fee may be made or charged for each insurance premium finance agreement entered into and no additional flat service fee may be made or charged for adding additional or subsequent premiums to an open end insurance premium finance agreement for which a flat service fee was previously made or charged.

Subd. 4. The premium finance company or the insurance agent shall deliver to the insured, or mail to him at his address shown in the agreement, a completed copy of that agreement.

History: 1974 c 353 s 8; 1975 c 309 s 1

59A.09 MAXIMUM FINANCE CHARGE.

Subdivision 1. No person engaged in the business of financing insurance premiums may charge, contract for, receive or collect a finance charge plus flat service fee with respect to an insurance premium finance agreement other than as permitted by this section.

Subd. 2. The finance charge shall be computed on the balance of the premiums due, after subtracting the down payment made by the insured in accordance with the premium finance agreement, from the effective date of the insurance coverage, for which the premiums are being advanced, to and including the date when final installment of the premium finance agreement is payable.

Subd. 3. The finance charge must not exceed five percent in excess of the discount rate on 90-day commercial paper in effect at the federal reserve bank located in the Ninth Federal Reserve District when an insurance premium finance agreement is made or when an additional or subsequent premium is added under an open end agreement. For expenses incurred in servicing the loan including any filing fees, application fee for the examination or investigation of the character of the borrower, comaker or security, and drawing any necessary papers in making the loan, an insurance premium finance company may contract for a flat rate service fee not exceeding the greater of one percent of the amount financed or \$20 per premium finance agreement. The flat service fee need not be refunded upon prepayment in full before maturity.

Subd. 4. The finance charge shall be computed in advance on the principal balance of a premium finance agreement according to the actuarial method on terms payable in substantially equal successive monthly installments.

Subd. 5. Notwithstanding the provisions of any premium finance agreement, any insured may prepay the obligation in full at any time. In such event he shall receive a refund credit. The amount of such refund credit shall represent at least as great a proportion of the finance charge as the sum of the periodic balances after the month in which prepayment is made bears to the sum of all periodic balances under the schedule of installments in the agreement. Where the amount of the refund is less than \$1, no refund need be made. If, in addition to the finance charge, an additional flat service fee was imposed, the flat service fee need not be refunded nor taken into consideration in computing the refund credit.

Subd. 6. Subdivision 3 applies only to a premium finance agreement in which the related insurance contract is for personal, family, or household use. The rate charged under an agreement made to finance an insurance policy for business, agricultural, or corporate purposes shall be as agreed to by the parties to the agreement.

History: 1974 c 353 s 9; 1979 c 261 s 1; 1983 c 200 s 1-3

59A.10 DELINQUENCY CHARGES.

Subdivision 1. A premium finance agreement may provide for payment by the insured of a delinquency charge. The delinquency charge may be \$1 or five percent of the delinquent installment, but not more than \$5. The delinquency charge may be imposed upon any installment which is in default for a period of ten days or more.

Subd. 2. If the default results in the cancellation of any insurance contract listed in the agreement, the agreement may provide for payment by the insured of a cancellation charge equal to the difference between any delinquency or default charge imposed with respect to the installment in default and \$5. A premium finance agreement may also provide for the payment of statutory attorneys fees and

statutory court costs if the agreement is referred for collection to an attorney not a salaried employee of the insurance premium finance company.

History: 1974 c 353 s 10

59A.11 CANCELLATION OF INSURANCE CONTRACT UPON DEFAULT.

Subdivision 1. When a premium finance agreement contains a power of attorney or other authority enabling the insurance premium finance company to cancel any insurance contract listed in the agreement, the insurance contract or contracts shall not be cancelled by the premium finance company unless such cancellation is effectuated in accordance with this section.

Subd. 2. Not less than ten days' written notice shall be mailed to the insured setting forth the intent of the insurance premium finance company to cancel the insurance contract unless the default is cured prior to the date stated in the notice. The insurance agent or insurance broker indicated on the premium finance agreement shall also be mailed ten days' notice of this action.

Subd. 3. Pursuant to the power of attorney or other authority referred to above, the insurance premium finance company may cancel on behalf of the insured by mailing to the insurer written notice stating when thereafter the cancellation shall be effective, and the insurance contract shall be cancelled as if such notice of cancellation had been submitted by the insured himself, but without requiring the return of the insurance contract. In the event that the insurer or its agent does not provide the insurance premium finance company with a specific mailing address for the purposes of receipt of the above notice, then mailing by the insurance premium finance company to the insurer at the address which is on file and of record with the commissioner of commerce pursuant to the provisions of chapters 60A and 72A shall be considered sufficient notice under this section. The insurance premium finance company shall also mail a notice of cancellation to the insured at his last known address and to the insurance agent or insurance broker indicated on the premium finance agreement.

Subd. 4. Where statutory, regulatory or contractual restrictions provide that the insurance contract may not be cancelled unless notice is given to a governmental agency, mortgagee, or other third party, the insurer shall give the prescribed notice on behalf of itself or the insured to the governmental agency, mortgagee or other third party within a reasonable time after the day it receives the notice of cancellation from the premium finance company. When the above restrictions require the continuation of insurance beyond the effective date of cancellation specified by the premium finance company, the insurance shall be limited to the coverage to which the restrictions relate and to the persons they are designed to protect.

History: 1974 c 353 s 11; 1983 c 289 s 114 subd 1; 1984 c 655 art 1 s 92

59A.12 APPLICATION OF UNEARNED PREMIUMS.

Subdivision 1. Whenever a financed insurance contract is canceled, within 30 days of the effective date of cancellation the insurer shall return whatever gross unearned premiums, computed pro rata, are due under the insurance contract to the premium finance company for the account of the insured or insureds. This action by the insurer satisfies the insurer's obligations under the insurance contract which relate to the return of the unearned premiums.

Subd. 2. In the event that a premium is subject to an audit to determine the final premium amount, the gross unearned premium will be calculated upon the deposit premium and the insurer shall return whatever gross unearned premiums are

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due based upon the deposit rather than the actual unearned premium to the finance company for the account of the insured or insureds.

Subd. 3. Assigned risk policies shall be handled in conformance with section 59A.11 and subdivisions 1 and 2.

Subd. 4. If the crediting of returned premiums to the account of the insured results in a surplus over the amount due from the insured, the premium finance company must refund the excess to the insured within 30 days after receipt of the returned premium; but no refund is required if it amounts to less than \$1.

History: 1974 c 353 s 12; 1983 c 200 s 4,5

59A.13 EXEMPTION FROM FILING.

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

History: 1974 c 353 s 13

59A.14 PRE-EXISTING PREMIUM FINANCE AGREEMENTS.

Any premium finance agreements executed prior to August 1, 1974 shall not be covered by the terms of sections 59A.01 to 59A.15. However, any amendments to pre-existing premium finance agreements shall be governed by these provisions.

History: 1974 c 353 s 14

59A.15 APPLICABILITY OF CHAPTER 14.

The provisions of chapter 14, shall apply to sections 59A.01 to 59A.15.

History: 1974 c 353 s 15; 1982 c 424 s 130