

Committee Substitute for House Bill No. 487

An act relating to premium finance companies and agreements; amending s. 627.828, F.S.; revising the net worth requirements for an applicant for a premium finance company license; authorizing a surety bond with a reduced net worth requirement; requiring that premium finance companies maintain Errors and Omissions Coverage and providing an exception; amending s. 627.8405, F.S.; revising prohibited acts by a premium finance company; amending s. 627.848, F.S.; requiring notification to the insured by the insurer and premium finance company on a canceled insurance contract, the amount of any unearned premium and unearned commission due to the insured after satisfaction of the contract; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 627.828, Florida Statutes, is amended to read:

627.828 License required.—

(1) Except as provided in ss. 627.901 and 627.902, no person shall engage in the business of a premium finance company unless licensed by the department. Every premium finance company licensed under the provisions of this part shall maintain at all times a net worth of \$35,000. However, in lieu of having a net worth of \$35,000, a premium finance company that has a net worth of \$10,000 may file a surety bond or other acceptable collateral with the department as approved by it in the amount of \$35,000, which bond or collateral must be maintained.

(2) The application for a license shall be in writing and in the form prescribed by the department. Every applicant shall provide evidence ~~proof~~ of a net worth of \$35,000 attested by two officers of the company, or a \$35,000 surety bond and evidence of a net worth of \$10,000 attested by two officers of the company. Assets to be used in computing the required net worth shall be determined by rules adopted by the department.

(3)(a) Each premium finance company authorized under the provisions of this part shall maintain at all times an errors and omissions insurance policy of no less than \$500,000 covering the acts of its officers, employees, and agents. The policy may contain reasonable deductibles not to exceed 2 percent of the policy limits.

(b)1. A premium finance company with an unencumbered net worth of at least \$15 million may self-insure the errors and omissions coverage if it meets the requirements of this paragraph.

2. To qualify as a self-insurer the premium finance company must:

a. Have and maintain an unencumbered net worth of \$15 million, which shall be determined based on assets permissible for insurers pursuant to ss. 625.012 and 625.031;

b. Annually demonstrate as part of its annual report, to the satisfaction of the department, that the net-worth requirement is being met; and

c. Obtain, as a part of its annual application for licensure as a premium finance company, a certificate of self-insurance from the department to be renewed annually.

3. If the department finds that the premium finance company:

a. Is not maintaining at all times an unencumbered net worth of at least \$15 million; or

b. Is not, in good faith, covering the errors and omissions of its officers, employees and agents.

the department shall, in addition to other penalties under this code, revoke or suspend the certificate of self-insurance, and the premium finance company shall be subject to the requirements of paragraph (a).

(c) The department may adopt rules necessary to administer this subsection, including rules prescribing the necessary forms.

(4)(3) A single license shall entitle the holder to operate more than one office.

(5)(4) At the time of filing an application for a license, the applicant shall pay to the department the license fee and, upon original application or upon application subsequent to denial of application, or revocation, suspension or surrender of a license, an investigation fee.

(6)(5) Such license shall state the name and address of the licensee, and a copy shall be kept conspicuously posted in each office of the licensee and shall not be transferable or assignable.

(7)(6) Prior to moving an existing office to another location, a licensee shall notify the department in writing of its intention to do so.

Section 2. Section 627.8405, Florida Statutes, is amended to read:

627.8405 Prohibited acts premium financing.—No premium finance company shall, in a premium finance agreement or other agreement, finance the cost of or otherwise provide for the collection or remittance of dues, assessments, fees, or other periodic payments of money provide financing for the cost of:

(1) A membership in an automobile club. The term “automobile club” means a legal entity which, in consideration of dues, assessments, or periodic payments of money, promises its members or subscribers to assist them in matters relating to the ownership, operation, use, or maintenance of a motor vehicle; however, this definition of “automobile club” does not include

persons, associations, or corporations which are organized and operated solely for the purpose of conducting, sponsoring, or sanctioning motor vehicle races, exhibitions, or contests upon racetracks, or upon racecourses established and marked as such for the duration of such particular events. The words "motor vehicle" used herein have the same meaning as defined in chapter 320.

(2) An accidental death and dismemberment policy sold in combination with a personal injury protection and property damage only policy.

(3) Any product not regulated under the provisions of this insurance code.

This section also applies to premium financing by any insurance agent or insurance company under part XVI. The department shall promulgate rules to assure disclosure, at the time of sale, of coverages financed with personal injury protection.

Section 3. Section 627.848, Florida Statutes, 1996 Supplement, is amended to read:

627.848 Cancellation of insurance contract upon default.—

(1) When a premium finance agreement contains a power of attorney or other authority enabling the premium finance company to cancel any insurance contract listed in the agreement, the insurance contract shall not be canceled unless cancellation is in accordance with the following provisions:

(a)1. Not less than 10 days' written notice shall be mailed to each insured shown on the premium finance agreement of the intent of the premium finance company to cancel his insurance contract unless the defaulted installment payment is received within 10 days.

2. After expiration of such period, the premium finance company shall mail to the insurer a request for cancellation, specifying the effective date of cancellation and the unpaid premium balance due under the finance contract, and shall mail a copy thereof to the insured at his last known address as shown on the premium finance agreement.

(b) Every notice of cancellation shall include, in type or print of which its face shall not be smaller than 12 points, a statement that, if the insurance contract or contracts provide motor vehicle liability insurance required by the financial responsibility law, proof of financial responsibility is required to be maintained continuously for a period of 3 years, pursuant to chapter 324, and the operation of a vehicle without such financial responsibility is unlawful.

(c) Upon receipt of a copy of the cancellation notice by the insurer or insurers, the insurance contract shall be canceled as of the date specified in the cancellation notice with the same force and effect as if the notice of cancellation had been submitted by the insured himself, whether or not the premium finance company has complied with the notice requirement of this

subsection, without requiring any further notice to the insured or the return of the insurance contract.

(d) All statutory, regulatory, and contractual restrictions providing that the insured may not cancel his insurance contract unless he or the insurer first satisfies such restrictions by giving a prescribed notice to a governmental agency, the insurance carrier, a mortgagee, an individual, or a person designated to receive such notice for such governmental agency, insurance carrier, or individual shall apply when cancellation is effected under the provisions of this section. The insurer, in accordance with such prescribed notice when it is required to give such notice in behalf of itself or the insured, shall give notice to such governmental agency, person, mortgagee, or individual; and it shall determine and calculate the effective date of cancellation from the day it receives the copy of the notice of cancellation from the premium finance company.

(e) Whenever an insurance contract is canceled in accordance with this section, the insurer shall promptly return the unpaid balance due under the finance contract, up to the gross amount available upon the cancellation of the policy, to the premium finance company and any remaining unearned premium to the agent or the insured, or both, for the benefit of the insured or insureds. The insurer shall notify the insured and the agent of the amount of unearned premium returned to the premium finance company and the amount of unearned commission held by the agent. The premium finance company within 15 days shall notify the insured and the agent the amount of unearned premium. Within 15 days of receipt of notification from the premium finance company, the agent shall return such amount including any unearned commission to the insured or with the written approval of the insured apply such amount to the purchase of other insurance products regulated by the department. The department may adopt rules necessary to implement the provisions of this subsection.

(f) If an insurance contract is canceled by an insurer upon the receipt of a copy of the cancellation notice from a premium finance company, and if such premium finance company has failed to provide the notice required by this subsection, the insured shall have a cause of action against the premium finance company for damages caused by such failure to provide notice.

(2) Any court of this state rendering or affirming a judgment or decree against a premium finance company and in favor of any named or omnibus insured or beneficiary arising out of a wrongful or improper cancellation of an insurance policy by such premium finance company shall award reasonable attorney's fees to the insured or beneficiary.

Section 4. This act shall take effect upon becoming a law.

Became a law without the Governor's approval May 30, 1997.

Filed in Office Secretary of State May 29, 1997.