

MAINE STATE LEGISLATURE

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ONE HUNDRED AND SIXTH LEGISLATURE

Legislative Document

No. 528

H. P. 399

House of Representatives, January 31, 1973

Referred to Committee on Business Legislation. Sent up for concurrence and ordered printed.

E. LOUISE LINCOLN, Clerk

Presented by Mr. Donaghy of Lubec.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-THREE

AN ACT to Regulate Insurance Premium Finance Companies.

Be it enacted by the People of the State of Maine, as follows:

Sec. 1. R. S., T. 9, § 3005, amended. Section 3005 of Title 9 of the Revised Statutes is amended to read as follows:

§ 3005. Exceptions

Chapters 281 to 289 shall not apply to any person, copartnership or corporation doing business under any law of this State or of the United States relating to national banks, savings banks, industrial banks, trust companies or loan and building associations, **nor shall they apply to any transactions involving extensions of credit pursuant to insurance premium finance agreements that are authorized by Part 13.**

Sec. 2. R. S., T. 9, Part 13, additional. Title 9 of the Revised Statutes is amended by adding a new Part 13 to read as follows:

PART 13

CHAPTER 373

THE INSURANCE PREMIUM FINANCE COMPANY ACT

§ 4001. Short title

This Act shall be known and may be cited as "The Insurance Premium Finance Company Act."

§ 4002. Definitions

The following words and phrases, when used in this Part, shall have the following meanings, unless a different meaning is clearly required by the context.

1. Authorized insurer and insurance contract. "Authorized insurer" and "insurance contracts" have the respective meanings assigned to them by the Maine Insurance Code, Title 24-A.

2. Commissioner. "Commissioner" means the Bank Commissioner.

3. Credit charge. "Credit charge" means that amount by which the balance payable by the insured exceeds the principal balance.

4. Financial institution. "Financial institution" has the meaning assigned to it by the Maine Banking Laws, Title 9.

5. Insurance agent and insurance broker. "Insurance agent" and "insurance broker" means, respectively, an insurance agent or broker duly licensed as such under the Maine Insurance Code, Title 24-A.

6. Insurance premium finance agreement. "Insurance premium finance agreement" means a promissory note or other written agreement by which an insured promises or agrees to pay to, or to the order of, either an insurance premium finance company or an insurance agent or broker the amount advanced or to be advanced under the agreement to an authorized insurer or to an insurance agent or broker in payment of premiums on an insurance contract, together with a credit charge, and where the unearned premium on the insurance contract is assigned as security or collateral for repayment of the debt.

7. Insurance premium finance company. "Insurance premium finance company" means a person engaged, in whole or in part, in the business of acquiring insurance premium finance agreements from insurance agents or brokers or other insurance premium finance companies, and an insurance agent, broker or other person who is engaged, in whole or in part, in the business of entering into and holding insurance premium finance agreements made and delivered by insureds to him or his order.

8. Insured. "Insured" means a person who enters into an insurance premium finance agreement with an insurance premium finance company or makes and delivers an insurance premium finance agreement to, or to the order of, an insurance agent or broker, whether or not he is insured under an insurance contract, premiums for which are advanced or to be advanced under the insurance premium finance agreement.

9. Licensee. "Licensee" means an insurance premium finance company holding a license issued by the commissioner under this Part.

10. Person. "Person" means an individual, corporation, business trust, estate, partnership or association, 2 or more persons having a joint or common interest, or any other legal or commercial entity.

§ 4003. Assignments

No person shall assign, transfer or sell any insurance premium finance agreement to any person who is not authorized under this Part to do the business of an insurance premium finance company in this State.

§ 4004. Licenses

No person shall engage in the business of an insurance premium finance company in this State without first obtaining a license from the commissioner as provided for in this Part. Any financial institution, credit union, national bank or federal savings and loan association authorized to do business in this State or any authorized insurer engaging in the business of an insurance premium finance company shall do so subject to all of the provisions of this Part, except that such institutions shall not be required to obtain a license or pay a license fee under this Part. Nothing contained in this Part shall be deemed to have any effect whatever upon any existing law regulating the power of or the conditions and limitations under which such institutions may engage in the business of an insurance premium finance company. Any license issued under this Part shall be kept conspicuously posted in the office of the licensee and shall not be transferable or assignable.

§ 4005. Application for license

1. Contents. Application for a license under this Part shall be in writing, under oath, and shall be in the form prescribed by the commissioner. The application shall state the name and residence and business addresses of the applicant, and, if the applicant is a copartnership or association, of every member thereof, and, if a corporation, of each officer and director thereof. It shall state the address where the business is to be conducted, demonstrate the financial responsibility of the applicant and set forth any other information the commissioner may require.

2. For each office. When an applicant has more than one office, application for license shall be made for each such office.

3. Fee. Each applicant for an insurance premium finance company license shall pay to the commissioner at the time of making the application, and annually thereafter upon renewal, a license fee of \$100 for each office where the business of an insurance premium finance company is conducted.

4. Abatement; expiration. No abatement in the amount of said license fee shall be made, if the license is issued for less than one year, nor if the license is surrendered, suspended or revoked prior to the expiration of the period for which such license was issued. Each license shall remain in full force and effect until it is surrendered, suspended, revoked or has expired. Each license shall expire on the last day of December of the year in which issued or for which a license fee shall have been paid unless prior to December 15th, the licensee shall pay to the Bank Commissioner the fee provided for in subsection 3 as a license fee for the succeeding calendar year.

5. Application. Any person engaged in the business of an insurance premium finance company on the effective date of this Part may continue in operation in accordance with this Part, but must obtain a license for each office at which he engages in such business by January 1, 1974.

6. Change of location. No licensee shall transact any business subject to this Part under any other name or maintain an office at any location other

than that designated in the license. In case such location be changed, the commissioner shall endorse the change of location on the license without charge.

§ 4006. Action by commissioner on license application

1. Duty. Within 60 days after the filing of an application for a license accompanied by payment of the required license fee, the commissioner shall:

A. Issue license. Issue and deliver to the applicant a license to engage in the business of an insurance premium finance company in accordance with this Part; or

B. Refuse to issue license. Refuse to issue the license for any reason for which he may suspend, revoke or refuse to renew any license under this Part.

2. Refusal. If the commissioner refuses to issue a license, he shall notify the applicant of the denial, the grounds for such denial and of his right to request a hearing within 10 days; and

A. License fee. If the applicant does not request a hearing, return the sum paid as a license fee; or

B. Hearing. If the applicant requests such a hearing, hold a hearing after having given 10 days' notice thereof, and within 30 days after such hearing the commissioner shall file a written decision containing his findings and conclusions and serve a copy thereof on the applicant.

§ 4007. Revocation, suspension or refusal to renew license

The commissioner may suspend, revoke or refuse to renew any license issued under this Part upon 10 days' notice in writing, forwarded by registered or certified mail to the principal place of business or residence of such licensee, stating the contemplated action and in general, the grounds therefor, after reasonable opportunity to be heard, if he shall find that the licensee or any owner, director, officer, member, partner, employee or agent of such licensee has:

1. Misstatements. Made any material misstatement in the application;
2. Violation of law. Knowingly or without the exercise of due care failed to comply with or violated any provisions of this Part;
3. Fraud. Defrauded any insured or willfully failed to perform any written agreement with any insured;
4. Misrepresentation. Willfully misrepresented or failed to disclose any of the material particulars or the nature thereof required to be stated or furnished to the insured under this Part;
5. Contracts signed in blank. Knowingly taken any instrument evidencing an insurance premium finance agreement or note which when signed contained blank spaces, except as provided by section 4014, subsection 3;
6. Bad faith. Otherwise demonstrated lack of financial responsibility, unworthiness, bad faith or dishonesty.

§ 4008. Investigation of licensees

The commissioner shall have the power to make such investigations as he shall deem necessary, and may examine the books, accounts, records and files of any person who is a party to or holder of an insurance premium finance agreement. The commissioner shall have the power to administer oaths and affirmations to any person whose testimony is required.

§ 4009. Commissioner's power of subpoena; contempt

The commissioner shall have the power to issue subpoenas to compel the attendance of witnesses and the production of documents, papers, books, records and other evidence before him in any matter pertaining to this Part.

In case of a failure of any person to comply with any subpoena issued by the commissioner or to testify to any matter concerning which he may be lawfully interrogated, the Superior Court, on application of the commissioner, may issue an order requiring the attendance of such person and the giving of testimony or production of evidence. Any person failing to obey the court's order may be punished as for contempt.

§ 4010. Records of transactions

Every insurance premium finance company shall keep within this State such books, accounts and records relating to all transactions under this Part as will enable the commissioner to enforce full compliance with this Part. The commissioner may authorize such records to be maintained outside of this State for good cause and he may prescribe the minimum information to be shown in and the procedures relating to the examination of such books, accounts and records.

§ 4011. Rules and regulations

The commissioner is authorized and empowered to make such general rules and regulations, and such specific rulings, demands, findings and orders as may be necessary for the proper conduct of the business authorized and licensed under and for the enforcement of this Part, in addition hereto and not inconsistent herewith.

§ 4012. Violations and penalties

1. Knowingly. Any person who shall knowingly violate this Part or shall directly or indirectly counsel, aid or abet such violation shall, upon conviction, be punished by a fine of not more than \$2,500 for each offense, or by imprisonment for not more than 90 days, or by both.

2. Section 4004. Any person who violates section 4004 shall, upon conviction, be punished by a fine of not less than \$100 nor more than \$500 for each offense.

3. Other sections. Upon complaint to the District Court or Superior Court by an insured, and upon a finding that a violation of sections 4003, 4004, 4014, 4016 or 4017 has occurred in connection with an insurance premium finance agreement to which the insured and an insurance premium

finance company are parties, the insurance premium finance company shall forfeit to the insured the credit charge under such agreement and the amount of any other charge imposed against the insured. Reasonable attorney's fees and costs shall be awarded to the insured, if he is the prevailing party in such action.

§ 4013. Statement of account

Upon written request by an insured, an insurance premium finance company shall give to the insured, within 10 days from the receipt of such request, a statement of the insured's account showing the date and amount of all payments made or credited to the account and the total amount, if any, unpaid under the agreement. Not more than 2 such statements shall be required in any 12-month period.

§ 4014. Form and content of insurance premium finance agreement

I. Form. An insurance premium finance agreement shall:

A. Be dated, signed by or on behalf of the insured and the printed portion thereof shall be in at least 8-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 place of business of the insured as specified by him, the name and place of business of the premium finance company to which payments are to be made, a description of the insurance contracts involved and the amount of the premium 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 principal balance (the difference between subparagraphs (1) and (2));
- (4) The amount of the credit charge;
- (5) The balance payable by the insured (sum of subparagraphs (3) and (4));
- (6) The number of installments required, the amount of each installment expressed in dollars and the due date or period thereof;

D. Contain a notice set out in a conspicuous manner and reading as follows: Notice to insured:

- (1) Read this agreement before you sign;
- (2) Do not sign this agreement if it contains blank spaces;
- (3) You are entitled to a copy of this agreement at the time you sign;
- (4) Keep your copy of this agreement to protect your legal rights;

E. If an insurance premium finance agreement is payable to, or to the order of, an insurance agent or broker not licensed as an insurance pro-

mium finance company, payments under the agreement must be payable at the office of an insurance premium finance company authorized under this Part to do business in the State to whom the agreement is by its terms to be and is subsequently assigned.

The item set out in paragraph C need not be stated in the sequence or order in which they appear in such clause and additional items may be included to explain the computations made in determining the amount to be paid by the insured.

2. Delivery. The licensee or the insurance agent or insurance broker shall deliver to the insured a complete copy of the agreement.

3. Blanks. No premium finance agreement shall be signed by an insured when it contains any blank spaces to be filled in after it has been signed, except that if the insurance contract involved has not yet been issued, the name of the insurer and the policy number may be left blank and later inserted in the original agreement and notice thereof shall be given to the insured.

4. Shall not contain. No premium finance agreement shall contain:

A. Any power of attorney to confess judgment in this State;

B. Any acceleration clause under which any part or all of the balance not yet matured may be declared due and payable because the holder deems himself to be insecure;

C. Any provision relieving the insurance premium finance company from liability upon any claim which the insured may have under the contract;

D. Any provisions whereby the insured waives any right of action against the insurance premium finance company or any other person acting in its behalf for any act committed in the collection of the payments under the agreement;

E. Any assignment of or order for the payment of any salary, wages, commissions or other compensation for services, or any part thereof, earned or to be earned.

§ 4015. Applicability of Truth-in-Lending Act

If a transaction subject to this Part is also subject to the provisions of Chapter 2 of Title 1 of the Federal Consumer Credit Protection Act or Part 12 of this Title, the provisions and requirements of said Act or Part 12 shall control in any case where they may conflict with the provisions of this Part.

§ 4016. Credit charge

An insurance premium finance company shall not charge, contract for, receive or collect a credit charge other than as permitted by this Part.

The credit charge shall be precomputed, using the United States Rule 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 premium finance agreement is payable.

The credit charge shall be precomputed at a maximum rate of 18% per annum or a charge of \$15 per insurance premium finance agreement, whichever is greater. However, any insured may prepay his insurance premium finance agreement in full at any time before the due date of the final installment and in such event the unearned finance charge shall be refunded. The amount of any such refund shall be calculated in accordance with the rule commonly known as the "Rule of 78ths", and shall represent at least as great a proportion of the credit charge, if any, 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 is less than \$1 no refund need be made.

§ 4017. Delinquency charge

1. Delinquency charge. An insurance premium finance agreement may provide for the payment by the insured of a delinquency and collection charge on each installment in default for a period of not less than 5 days in an amount of \$1 to a maximum not in excess of 5% of such installment or \$5, whichever is less, provided that only one such delinquency and collection charge may be collected on any such installment regardless of the period during which it remains in default and, if the default results in the cancellation of any insurance contract listed in the agreement, the agreement may provide for the payment by the insured of a cancellation charge equal to the difference between any delinquency and collection charge imposed in respect to the installment in default and \$5.

2. Attorney's fees. An insurance premium finance agreement may also provide for the payment of attorney's fees not exceeding 20% of the amount due and payable under the agreement, if it is referred for collection to an attorney not a salaried employee of the insurance premium finance company holding the agreement.

3. Prerequisites. Notwithstanding this section, an insurance premium finance company shall not take or charge an insured any cancellation charge or attorney's fees unless, within 10 days after default in the payment of any installment of a premium finance agreement, the company has mailed a notice of the default to the insured at his address as shown on the agreement and to any insurance agent or broker named therein at his place of business as shown therein.

§ 4018. Unauthorized charges

All costs and charges in connection with an insurance premium finance agreement not authorized by this Part shall be unenforceable. Any payment of such costs or charges shall be applied to the next maturing payment or, if the agreement has been fully paid, remitted to the insured and the insured shall be entitled to recover all such costs or charges.

§ 4019. Exclusions

This Part shall not affect the inclusion of a charge for insurance on a bona fide sale of property, goods or services on installments, nor shall it apply to insurance premiums financed by a loan contract which does not provide that the unearned premiums shall be security therefor.

§ 4020. Cancellation of insurance contract upon default

1. Power of attorney. 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 cancelled by the insurance premium finance company unless such cancellation is effectuated in accordance with this section.

2. Notice. Not less than 10 days' written notice shall be mailed to the insured of the intent of the insurance premium finance company to cancel the insurance contract unless the default is cured within such 10-day period. A copy of said notice shall also be sent to the insurance agent or insurance broker indicated on the insurance premium finance agreement.

3. —further notice. After expiration of such 10-day period, the insurance premium finance company may thereafter request in the name of the insured, cancellation of such insurance contract or contracts by mailing to the insurer a notice of cancellation, 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 or contracts. 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 insurance premium finance agreement. The effective date of such cancellation shall not be earlier than 3 days after the date of mailing of such notice to the insured and to the insurance agent or insurance broker.

4. Restrictions. All statutory, regulatory and contractual restrictions providing that the insurance contract may not be cancelled unless notice is given to a governmental agency, mortgagee or other 3rd party shall apply where cancellation is effected under the provisions of this section. The insurer shall give the prescribed notice in behalf of itself or the insured to any governmental agency, mortgagee or other 3rd party on or before the 2nd business day after the day it receives the notice of cancellation from the insurance premium finance company and shall determine the effective date of cancellation, taking into consideration the number of days' notice required to complete the cancellation.

§ 4021. Extension of contract

An insurance premium finance company may, upon agreement with the insured, extend the scheduled due date or defer the scheduled payment of all or of any part of any installment or installments payable thereunder. The agreement for such extension or deferment must be in writing and signed by

the parties thereto. The insurance premium finance company may charge and contract for the payment of an extension or deferral charge by the insured and collect and receive the same, but such charge may not exceed an amount equal to 1% per month simple interest on the amount of the installment or installments, or part thereof, extended or deferred for the period of extension or deferral. Such period shall not exceed the period from the date when such extended or deferred installment or installments, or part thereof, would have been payable in the absence of such extension or deferral, to the date when such installment or installments, or part thereof, are made payable under the agreement of extension or deferment; except that a minimum charge of \$1 for the period of extension or deferral may be made in any case where the extension or deferral charge, when computed at such rate, amounts to less than \$1.

STATEMENT OF FACT

This legislation is proposed for the purpose of regulating the business activities of those companies and persons who engage in the financing of insurance premiums in this State. The financing of insurance premiums represents a major, fast growing, but presently unregulated type of credit transaction. Furthermore, the lack of any regulation concerning such transactions leaves those who engage in such financing free to charge what, in some instances, are thought to be exorbitant rates of interest and results in a general lack of uniformity relative to the contents of such financing agreements and the rights and obligations of those who are parties to such agreements. Consequently, the foregoing legislation contains a provision for the maximum rate of interest that may be legally charged in connection with the financing of insurance premiums and it also contains provisions relative to the content and form of insurance premium financing agreements and the rights and obligations of the parties under such agreements.