

MAINE STATE LEGISLATURE

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ONE HUNDRED AND SEVENTH LEGISLATURE

Legislative Document

No. 1783

H. P. 1405

House of Representatives, April 7, 1975

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

EDWIN H. PERT, Clerk

Presented by Mrs. Clark of Freeport.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-FIVE

AN ACT to Reinstiate the Insurance Premium Finance Company Act.

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

Sec. 1. 9-A MRSA § 5-110, sub-§§ 3 and 4 are enacted to read:

3. Except as provided in subsection 4, the notice shall be in writing and conspicuously state: The name, address and telephone number of the creditor to whom payment is to be made, a brief identification of the credit transaction, the consumer's right to cure the default and the amount of payment and date by which payment must be made to cure the default. A notice in substantially the following form complies with this subsection:

(name, address and telephone number of creditor)

(account number, if any)

(brief identification of credit transaction)

(date) is the **LAST DAY FOR PAYMENT**

(amount) is the **AMOUNT NOW DUE**

You are late in making your payment(s). If you pay the **AMOUNT NOW DUE** (above) by the **LAST DAY FOR PAYMENT** (above), you may continue with the contract as though you were not late. If you do not pay by that date, we may exercise our rights under the law.

If you are late again in making your payments, we may exercise our rights without sending you another notice like this one. If you have questions, write or telephone the creditor promptly.

4. If the consumer credit transaction is subject to the Insurance Premium Finance Company Act, the notice shall conform to the requirements of subsection 3 and a notice in substantially the form specified in that subsection complies with this subsection, except for the following:

A. In lieu of a brief identification of the credit transaction, the notice shall identify the transaction as an insurance premium financing transaction and each insurance policy or contract that may be cancelled;

B. In lieu of the statement in the form of notice specified in subsection 3 that the creditor may exercise his rights under the law, the statement that each policy or contract identified in the notice may be cancelled; and

C. The last paragraph of the form of notice specified in subsection 3 shall be omitted.

Sec. 2. 9-A MRSA § 5-III, as enacted by PL 1973, c. 762, § 1, is repealed and the following enacted in place thereof:

§ 5-III. Cure of default

1. With respect to a consumer credit transaction, except as provided in subsection 2, after a default consisting only of the consumer's failure to make a required payment, a creditor, because of that default, may neither accelerate maturity of the unpaid balance of the obligation, nor take possession of or otherwise enforce a security interest in goods that are collateral until 20 days after a notice of the consumer's right to cure, as provided in section 5-110, is given, nor with respect to a transaction subject to the Insurance Premium Finance Company Act, give notice of cancellation as provided in subsection 4 until 10 days after a notice of the consumer's right to cure, as provided in section 5-110, is given. Until expiration of the minimum applicable period after the notice is given, the consumer may cure all defaults consisting of a failure to make the required payment by tendering the amount of all unpaid sums due at the time of the tender, without acceleration, plus any unpaid delinquency or deferral charges. Cure restores the consumer to his rights under the agreement as though the defaults had not occurred.

2. With respect to defaults on the same obligation other than an obligation subject to the Insurance Premium Finance Company Act and subject to subsection 1, after a creditor has once given a notice of consumer's right to cure, as provided in section 5-110, this section gives the consumer no right to cure and imposes no limitation on the creditor's right to proceed against the consumer or goods that are collateral. For the purpose of this section, in open-end credit, the obligation is the unpaid balance of the account and there is no right to cure and no limitation on the creditor's rights with respect to a default that occurs within 12 months after an earlier default as to which a creditor has given a notice of consumer's right to cure, as provided in section 5-110.

3. This section and the provisions on waiver, agreements to forego rights and settlement of claims, as provided in section 1-107, do not prohibit a consumer from voluntarily surrendering possession of goods which are collateral

and the creditor from thereafter accelerating maturity of the obligation and enforcing the obligation and his security interest in the goods at any time after default.

4. If a default on transaction subject to the Insurance Premium Finance Company Act is not cured, the creditor may give notice of cancellation of each insurance policy or contract to be cancelled. If given, the notice of cancellation shall be in writing and given to the insurer who issued the policy or contract and to the insured. The insurer, within 2 business days after receipt of the notice of cancellation together with a copy of the insurance premium finance agreement if not previously given to him, shall give any notice of cancellation required by the policy, contract or law and, within 10 business days after the effective date of the cancellation, pay to the creditor any premium unearned on the policy or contract as of that effective date. Within 10 business days after receipt of the unearned premium, the creditor shall pay to the consumer indebted upon the insurance premium finance agreement any excess of the unearned premium received over the amount owing by the consumer upon the insurance premium finance agreement.

Sec. 3. 9-C MRSA is enacted to read:

TITLE 9-C

GENERAL FINANCING

PART 2

REGULATION OF INSURANCE PREMIUM FINANCING

CHAPTER 101

INSURANCE PREMIUM FINANCE COMPANY ACT

§ 1001. Short title

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

§ 1002. Definitions

As used in this Part, unless the context otherwise indicates, the following words and phrases shall have the following meanings.

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

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

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

4. 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.

5. 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.

6. 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.

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

8. 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.

9. Superintendent. "Superintendent" means the Superintendent of the Bureau of Consumer Protection.

10. Supervised financial organization. "Supervised financial organization" has the meaning assigned to it by the Maine Consumer Credit Code, Title 9-A.

§ 1003. 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.

§ 1004. Licenses

No person shall engage in the business of an insurance premium finance company in this State without first obtaining a license from the superintendent as provided for in this Part. Any supervised financial organization 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 organizations 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 organization 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.

§ 1005. 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 superintendent. 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 superintendent 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 superintendent 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 superintendent the fee provided for in subsection 3 as a license fee for the succeeding calendar year.

5. 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 is changed, the superintendent shall endorse the change of location on the license without charge.

§ 1006. Action by superintendent 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 superintendent 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 superintendent 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 superintendent shall file a written decision containing his findings and conclusions and serve a copy thereof on the applicant.

§ 1007. Revocation, suspension or refusal to renew license

The superintendent 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 1014, subsection 3;
6. Bad faith. Otherwise demonstrated lack of financial responsibility, unworthiness, bad faith or dishonesty.

§ 1008. Investigation of licensees

The superintendent 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 superintendent shall have the power to administer oaths and affirmations to any person whose testimony is required.

§ 1009. Superintendent's power of subpoena; contempt

The superintendent 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 superintendent or to testify to any matter concerning which he may be lawfully interrogated, the Superior Court, on application of the superintendent, 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.

§ 1010. Records of transactions

1. Every licensee shall maintain records in conformity with generally accepted accounting principles and practices in a manner that will enable the superintendent to determine whether the licensee is complying with the provisions of this Part. The record keeping system of a licensee shall be sufficient if he makes the required information reasonably available. The records need not be kept in the place of business where insurance premium finance agreements are made or assigned, if the superintendent is given free access to the records wherever located. The records pertaining to any agreement need not be preserved for more than 2 years after making the final entry relating to the agreement but in the case of a revolving account the 2 years is measured from the date of each entry.

2. If the licensee's records are located outside this State, the licensee at the superintendent's option shall make them available to the superintendent at a convenient location within this State, or pay the reasonable and necessary expenses for the superintendent or his representative to examine them at the place where they are maintained. The superintendent may designate representatives, including comparable officials of the State in which the records are located, to inspect them on his behalf.

§ 1011. Rules and regulations

The superintendent 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 in accordance with Title 9-A, sections 6-401 through 6-414.

§ 1012. 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 1004. Any person who violates section 1004 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 1003, 1004, 1014 or 1016 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.

§ 1013. 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.

§ 1014. Form and content of insurance premium finance agreement

1. 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, the 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. If an insurance premium finance agreement is payable to, or to the order of, an insurance agent or broker not licensed as an insurance premium 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 items 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; and

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.

§ 1015. Applicability of Truth-in-Lending Act and the Maine Consumer Credit Code

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

§ 1016. Credit charge

The credit charge, calculated according to the actuarial method, may not exceed the equivalent of 18% per year on the unpaid balances of the amount financed or a charge of \$15 per insured premium finance agreement, whichever is greater.

This section does not limit or restrict the manner of calculating the credit charge whether by way of add-on, discount or otherwise, so long as the rate of the credit charge does not exceed that permitted by this section.

§ 1017. 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.

§ 1018. 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 premium shall be security therefor.

§ 1019. Fees

The expenses of the superintendent necessarily incurred in the examination of licensees shall be chargeable to such person. Every licensee shall be assessed for the actual expenses, including travel expenses, incurred by the superintendent in connection with any examination or investigation, whether regular or special, such assessments to include the proportionate part of the salaries and expenses of examiners while engaged in such examinations. Such assessment shall be made by the superintendent as soon as feasible after the close of such examination or investigation and notice thereof shall forthwith be sent to such person. All assessments so made shall be paid to the superintendent by such person within 30 days following such notice.

The aggregate of license and examination fees provided for by this Part is appropriated for the use of the Bureau of Consumer Protection. Any balance of said funds shall not lapse but shall be carried forward to be expended for the same purposes in the following fiscal year.

FISCAL NOTE

It is estimated that passage of this bill will result in an annual fee revenue of \$2,000 per year, which will be used for the administration of this Act.

STATEMENT OF FACT

The purpose of this bill is to reinstate the Insurance Premium Finance Company Act that was repealed on January 1, 1975. This unique type of financing plan usually requires that the unearned premium on the insurance contract being financed be assigned as security or collateral for repayment of the debt and authorizes the insurance premium finance company to cancel the insurance on behalf of the insured for nonpayment or late payments made on the insurance premium financing agreement. Very little risk is involved for the insurance premium finance company. Strict controls are needed to insure that a consumer's insurance policy is not cancelled unnecessarily and without due notice and that the rate of finance charge is aligned with the risk involved.