

COMMONWEALTH OF VIRGINIA

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STATE CORPORATION COMMISSION BUREAU OF INSURANCE

June 5, 1981

ADMINISTRATIVE LETTER 1981-5

TO: Insurance Premium Finance Companies Licensed to do Business in Virginia

RE: 1981 Legislation - Effective July 1, 1981

Attached is a copy of House Bill 1024 (Chapter 107) enacted by the General Assembly of Virginia during its 1981 Session.

This Bill effects a number of changes in the laws pertaining to the regulation of insurance premium finance companies, the principal of which are:

INTEREST RATE - (Maximum): increase to 1 percent per month in advance upon the entire amount advanced repayable in installments;

SERVICE CHARGE - (Maximum): \$15 (previously authorized by Regulation) fully earned upon receipt with not more than one charge for each premium finance agreement;

DEFAULT CHARGE - (Permissive): not in excess of 5 cents for each \$1 of an installment not paid in full within seven days, with only one such charge on any installment;

DISHONORED CHECK CHARGE - (Permissive): not in excess of \$5 for each check returned unpaid because the drawer had no account or insufficient funds in the payor bank.

(NOTE: If an insurance premium finance company will assess the DEFAULT and DISHONORED CHECK charges upon those occurrences, that fact must be stated in the premium finance agreement.)

LICENSE FEE INCREASE from \$100 to \$200 for the initial license or for the renewal thereof.

Please read the entire Bill for information on its other provisions not referred to above.

Sincerely,

James W. Newman, Jr.
James W. Newman, Jr.
Commissioner of Insurance

WGF:dj
Attachment

CHAPTER 1

An Act to amend and reenact §§ 38.1-736, 38.1-737, 38.1-738, 38.1-741, 38.1-742, 38.1-743, and 38.1-745 of the Code of Virginia, to amend the Code of Virginia by adding sections numbered 38.1-740.1 and 38.1-740.2, and to repeal § 38.1-740 of the Code of Virginia, all regulating insurance premium finance companies.

[H 1024]

Approved MAR 9 1981

Be it enacted by the General Assembly of Virginia:

1. That §§ 38.1-736, 38.1-737, 38.1-738, 38.1-741, 38.1-742, 38.1-743, and 38.1-745 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding sections numbered 38.1-740.1 and 38.1-740.2 as follows:

§ 38.1-736. License required; application; fee.—No insurance premium finance company shall engage in the business of financing insurance premiums in this State until it has obtained a license from the Commission as provided in this chapter. Application for a license shall be made in writing, in the form prescribed by the Commission, and shall be accompanied by an application fee of ~~one~~ *two* hundred dollars.

§ 38.1-737. Investigation of application; issuance of license.—Upon the filing of an application and the payment of the application fee, the Commission shall make an investigation of each application ; ~~and shall issue or deny a license within sixty days from the date said application is filed and shall advise the applicant of its decision thereon provided, however, that the Commission may extend the period for issuing or denying an application by order reciting the reasons for the extension .~~ The Commission shall issue the ~~a~~ license ~~expiring on December thirty-first of the calendar year the thirtieth day of June next succeeding the date of issuance~~ } if it finds (1) that the application is in proper form and that the required fee has been paid; (2) that the financial responsibility, experience, character and general fitness of the applicant, or of its members if the applicant be a copartnership or association, or of its officers and directors, if the applicant be a corporation, are such as are calculated to command the confidence of the public and to warrant belief that the business will be operated lawfully, honestly, fairly and efficiently within the purpose of this chapter; (3) that the applicant, if a corporation, is a Virginia corporation or if a foreign corporation that it has a certificate of authority to transact business in Virginia; and, (4) that the applicant *has assets equal to or greater than its liabilities and* has available for the operation of the business liquid assets sufficient for the conduct of the business that it proposes to conduct in this State.

§ 38.1-738. Renewal of license.—Subject to the provisions of § 38.1-739 the holder of a license under this chapter may renew such license from year to year, as of the first day of July of each year, upon payment of an annual license fee of ~~one~~ *two* hundred dollars, unless such license is surrendered, suspended or revoked.

§ 38.1-740.1. *Maximum interest rate and maximum service charge on premium finance agreement.—A. The Commission shall investigate from time to time the economic conditions and other factors relating to and affecting the business of insurance premium finance companies and shall ascertain all pertinent facts necessary to determine what maximum interest rate and what maximum service charge shall be permitted. Upon the basis of such ascertained facts and subject to the restrictions, provisions, and limitations imposed by this chapter, the Commission shall determine and fix by regulation or order the maximum interest rate and maximum service charge which may be received in advance upon the amount advanced by any insurance premium finance company.*

B. The Commission shall initially fix the maximum interest rate at one percent per month charged in advance upon the entire amount advanced payable in installments and shall initially fix the maximum service charge at fifteen dollars. Thereafter, such maximum interest rate and maximum service charge shall be determined by the Commission after giving due consideration to such factors as (i) prevailing market interest rates, (ii) other relevant cost indices, and (iii) the industry-wide experience of premium finance companies operating in Virginia. Before redetermining any such maximum interest rate or maximum service charge, the Commission shall give all licensees reasonable notice and reasonable opportunity to be heard and to introduce evidence with respect thereto.

C. Interest at the authorized rate may be charged from the effective date of the premium finance agreement or the inception date of the insurance contract, whichever is earlier, for which the premiums are being advanced to and including the date when the final installment of the premium finance agreement is payable. The service charge received

by a premium finance company shall be fully earned upon its receipt and no portion thereof need be refunded upon cancellation or prepayment of the loan. Not more than one service charge shall be made for each premium finance agreement, and no insurance agent or insurance premium finance company shall induce any person to enter into more than one premium finance agreement for the purpose of obtaining more than one service charge. No part of any charges shall be paid to any insurance agent by an insurance premium finance company.

D. Notwithstanding the foregoing, the Commission by rule or order, may exempt any premium finance agreement or class of premium finance agreements or any market segment from any of the provisions of this section, if and to the extent it finds their application unnecessary to achieve the purposes of this chapter.

§ 38.1-740.2. Default charge; bad check charge.—A. If any installment under a premium finance agreement is not paid in full within seven days, Sundays and holidays included, after it is due the premium finance company may charge and collect a default charge not to exceed five cents for each one dollar of such installment, but such default charge may be collected only once on any installment.

B. A premium finance company may charge and collect a fee, not in excess of five dollars, for each check returned to the premium finance company because the drawer had no account or insufficient funds in the payor bank.

§ 38.1-741. Forms of premium finance agreements and related forms to be approved by Commission; false or misleading statements or omissions prohibited.—No form of premium finance agreement or any related form used in this State by an insurance premium finance company shall be used until it is approved by the ~~Commissioner of Insurance~~ Commission and such form shall contain no statements that are materially false or misleading or omit statements necessary to prevent them from being in any material way false or misleading.

§ 38.1-742. Examination of books and records of company; bond; rules and regulations.—The Commission is empowered: (1) to examine the books and records of an insurance premium finance company; (2) to require it to enter into bond with surety approved by the Commission in the penalty determined as reasonable by the Commission conditioned to protect its customers and the public in the manner required by law; provided, however, that the aggregate liability of the surety for all breaches of the conditions of the bond shall, in no event, exceed the penalty of such bond, and that the surety on the bond shall have the right to cancel such bond upon thirty days' notice in writing to the ~~Commissioner~~ Commission and thereafter shall be relieved of liability for any breach of condition occurring after the effective date of said cancellation; and, (3) to establish rules and regulations with respect to the operation of insurance premium finance companies not inconsistent with the provisions of this chapter, including, without limitation, rules and regulations with respect to cancellation of policies of insurance by insurance premium finance companies, the notice required to be given the insured and the insurer, and the mutual obligations and duties of insurance companies and insurance premium finance companies with regard thereto.

If the Commission finds from any financial statement, report or examination or in any other manner (i) that an insurance premium finance company's financial condition, method of operation or manner of doing business does not satisfy the Commission that the company can meet its obligations to all customers or (ii) that the company's continued operation in this State is hazardous to customers and creditors in this State and to the public, it may, after giving the company ten days' notice thereof and affording it an opportunity to be heard and to introduce evidence in its behalf, order the company to take appropriate action to remedy the concerns of the Commission. Any hearing with regard to such order may be informal, and the required notice may be waived by the Commission and the company. If the Company shall fail to comply with the Commission's order within such time as it prescribes, the Commission, in the manner set out in § 38.1-739, may suspend or revoke the license of such company to transact an insurance premium finance business in this State.

§ 38.1-743. Disposition of license and other fees.—The Commission shall collect and ~~turn~~ pay directly into the State Treasury all license and other fees; and all amounts so collected and the unexpended balances thereof may be used only for the payment of the expenses of the administration of this chapter and of the performance of other functions of the Bureau of Insurance of the Commission which shall be placed by the State Comptroller to the credit of the fund for the maintenance of the bureau or division of the Commission responsible for the administration of this chapter.

§ 38.1-745. Exemptions.—A. 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,

encumbrancers, successors, or assigns.

B. This chapter shall not apply to the inclusion of a charge for insurance in a sale of property, goods or services payable in installments, or in a loan made for purposes other than the financing of insurance premiums only.

2. That § 38.1-740 of the Code of Virginia is repealed.

President of the Senate

Speaker of the House of Delegates

Approved:

Governor