

CHAPTER 21
INSURANCE PREMIUM FINANCE COMPANIES

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§ 81-21-1. Definitions.

The following words and phrases shall have the meanings ascribed herein unless the context clearly indicates otherwise:

- (a) "Commissioner" means the Commissioner of Banking and Consumer Finance.
- (b) "Person" means an individual, partnership, association, business corporation, nonprofit corporation, common-law trust, joint stock company or any other entity, however organized.
- (c) "Premium finance agreement" means an agreement by which an insurance or prospective insured promises to pay to a premium finance company the amount advanced or to be advanced to an insurer or to an insurance agent or broker in payment of premiums of an insurance contract together with interest or discount and a service charge, as authorized and limited by Sections 81-21-13 through 81-21-23.
- (d) "Premium finance company" means a person engaged in the business of entering into premium finance agreements or acquiring premium finance agreements from other premium finance companies.
- (e) "Records" or "documents" means any item in hard copy or produced in a format of storage commonly described as electronic, imaged, magnetic, microphotographic or otherwise, and any reproduction so made shall have the same force and effect as the original thereof and be admitted in evidence equally with the original.

SOURCES: Laws, 1992, ch. 569, § 1; Laws, 2000, ch. 621, § 35, eff from and after passage (approved May 23, 2000.)

§ 81-21-3. License requirement; fees; deposit of fee revenues in Consumer Finance Fund; license application form; promulgation of rules and regulations.

- (1) No person shall engage in the business of a premium finance company in this state without first having obtained a license as a premium finance company from the commissioner.
- (2) With each initial application for a license, the applicant shall pay to the commissioner at the time of making the application a license fee of Seven Hundred Fifty Dollars (\$750.00), and for renewal applications, an annual renewal fee of Four Hundred Seventy-five Dollars (\$475.00) payable as of the first day of July of each year to the commissioner for deposit into the special fund in the State Treasury designated as the "Consumer Finance Fund." The commissioner may employ persons as necessary to administer this chapter and to examine or investigate and make reports on violations of this chapter.
- (3) The commissioner may charge the licensee an examination fee in an amount not less than Three Hundred Dollars (\$300.00) nor more than Six Hundred Dollars (\$600.00) for each office

or location within the State of Mississippi, plus any actual expenses incurred while examining the licensee's records or books that are located outside the State of Mississippi. However, in no event shall a licensee be examined more than once in a two-year period unless for cause shown based upon consumer complaint and/or other exigent reasons as determined by the commissioner. Those fees shall be payable in addition to other fees and taxes now required by law and shall be expendable receipts for the use of the commissioner in defraying the cost of the administration of this chapter.

All fees, license tax and penalties provided for in this chapter that are payable to the commissioner shall, when collected by him or his designated representative, be deposited in the special fund in the State Treasury known as the "Consumer Finance Fund" and shall be expended by the commissioner solely and exclusively for the purpose of administering and enforcing the provisions of this chapter.

(4) Application for licensing shall be made on forms prepared by the commissioner and shall contain the following information:

(a) Name, business address and telephone number of the premium finance company;

(b) Name and business address of corporate officers and directors or principals or partners; and

(c) A sworn statement by an appropriate officer, principal or partner of the premium finance company that:

(i) The premium finance company is financially capable to engage in the business of insurance premium financing;

(ii) If a corporation, that the corporation is authorized to transact business in this state; and

(iii) If any material change occurs in the information contained in the registration form, a revised statement shall be submitted to the commissioner.

(5) The commissioner is authorized to promulgate rules and regulations to effectuate the purposes of this chapter. All such rules and regulations shall be promulgated in accordance with the provisions of the Mississippi Administrative Procedures Law.

Sources: Laws, 1992, ch. 569, § 2; Laws, 2000, ch. 621, § 36; Laws, 2004, ch. 450, § 5, eff from and after passage (approved Apr. 28, 2004.)

§ 81-21-5. Investigation of license applicant; hearing for applicant found unqualified; conditions for issuance or renewal of license.

(1) Upon the filing of an application and the payment of the license fee, the commissioner shall make an investigation of each applicant and shall issue a license if the application is qualified in accordance with this chapter. If the commissioner does not so find, he or she, at the request of the applicant, shall give the application a full hearing in accordance with the Mississippi Administrative Procedures Law.

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

- (a) Is competent and trustworthy and intends to act in good faith;
- (b) Has a good business reputation and has had the experience or training or possesses the abilities so as to be qualified to act as a premium finance company;
- (c) If a corporation, is incorporated under the laws of this state or, if a foreign corporation, is authorized to transact business in this state.

SOURCES: Laws, 1992, ch. 569, § 3, eff from and after July 1, 1992.

§ 81-21-7. Revocation or suspension of license; grounds; right to hearing.

(1) The commissioner may revoke or suspend the license of any premium finance company when after investigation the commissioner finds that:

- (a) The license was obtained by material misrepresentation or fraud;
 - (b) The holder of the license has shown himself untrustworthy or incompetent to act as a premium finance company; or
 - (c) The licensee has violated any of the provisions of this chapter.
- (2) Before the commissioner shall revoke, suspend or refuse to renew the license of any premium finance company, the person aggrieved shall be entitled to a hearing in accordance with the Mississippi Administrative Procedures Law.

SOURCES: Laws, 1992, ch. 569, § 4, eff from and after July 1, 1992.

§ 81-21-9. Penalty in lieu of revocation or suspension of license.

(1) In lieu of revoking or suspending the license for any of the causes enumerated in this chapter, after a hearing as provided in Section 81-21-7, the commissioner may subject the company to a penalty not to exceed Five Hundred Dollars (\$500.00) for each offense when the commissioner finds that the public interest would not be harmed by the continued operation of the company. The amount of any such penalty shall be paid by the company to the commissioner for deposit into the special fund in the State Treasury designated as the "Consumer Finance Fund." At any hearing provided by this chapter, the commissioner shall have authority to administer oaths to witnesses. Anyone testifying falsely, after having been administered such oath, shall be subject to the penalty of perjury.

(2) If any person engages in business as provided for in this chapter without paying the license fee provided for in this chapter before commencing business or before the expiration of the person's current license, as the case may be, then the person shall be liable for the full amount of the license fee, plus a penalty in an amount not to exceed Twenty-five Dollars (\$25.00) for each

day that the person has engaged in the business without a license or after the expiration of a license.

(3) When the commissioner has reasonable cause to believe that a person is violating any provision of this chapter, the commissioner, in addition to and without prejudice to the authority provided elsewhere in this chapter, may enter an order requiring the person to stop and refrain from the violation. The commissioner may sue in any circuit court of the state having jurisdiction and venue to enjoin the person from engaging in or continuing the violation or from doing any act in furtherance of the violation. In such an action, the court may enter an order or judgment awarding a preliminary or permanent injunction.

Sources: Laws, 1992, ch. 569, § 5; Laws, 2000, ch. 621, § 37; Laws, 2004, ch. 450, § 6, eff from and after passage (approved Apr. 28, 2004.)

§ 81-21-10. Commissioner authorized to examine persons suspected of conducting business requiring a license.

The commissioner, or his duly authorized representative, for the purpose of discovering violations of this chapter and for the purpose of determining whether persons are subject to the provisions of this chapter, may examine persons licensed under this chapter and persons reasonably suspected by the commissioner of conducting business that requires a license under this chapter, including all relevant books, records and papers employed by those persons in the transaction of their business, and may summon witnesses and examine them under oath concerning matters relating to the business of those persons, or such other matters as may be relevant to the discovery of violations of this chapter, including without limitation the conduct of business without a license as required under this chapter.

SOURCES: Laws, 2000, ch. 621, § 38, eff from and after passage (approved May 23, 2000.)

§ 81-21-11. Records.

(1) A premium finance company shall maintain records of its premium finance transactions.

(2) A premium finance company shall preserve its records of premium finance transactions, including preservation by means of electronic data processing or computer records, for at least two (2) years after making the final entry with respect to any premium finance agreement. The preservation of records in photographic, microfilm or microfiche form constitutes compliance with this section.

SOURCES: Laws, 1992, ch. 569, § 6, eff from and after July 1, 1992.

§ 81-21-13. Premium finance agreement; contents.

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 broker negotiating the related insurance contract, the name and residence or place of business of the insured, the name and place of business of the premium finance company, a brief description of the insurance contracts involved and the amount of the premium; and

(c) Set forth the following items, where applicable:

(i) The total amount of the premium, less an itemized listing of any nonrefundable charges;

(ii) The amount of the down payment;

(iii) The principal balance, which is the difference between the amounts stated under subparagraphs (i) and (ii) of this paragraph;

(iv) The amount of the interest and the annual percentage rate;

(v) The balance payable by the insured, meaning the sum of amounts stated under subparagraphs (iii) and (iv) of this paragraph; and

(vi) The number of installments required, the amount of each installment expressed in dollars and the due date or period thereof.

Sources: Laws, 1992, ch. 569, § 7; Laws, 2004, ch. 450, § 7, eff from and after passage (approved Apr. 28, 2004.)

§ 81-21-15. Permissible charges; computation of interest; prepayment by insured.

(1) A premium finance company shall not charge, contract for, receive or collect any interest or service charge other than as permitted in this section.

(2) The interest is to 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 contract or as otherwise agreed to by the parties, for which the premiums are being advanced, to the date when the final installment of the premium finance agreement is payable.

(3) Notwithstanding any provision of law to the contrary, for any loan or extension of credit in an amount of Ten Thousand Dollars (\$10,000.00) or less, made by a licensee under this chapter, the licensee may contract for and receive any finance charge agreed to in writing by the licensee and the insured, not to exceed twenty-four percent (24%) per annum on the unpaid balance; however, if the loan or extension of credit is in an amount more than Ten Thousand Dollars (\$10,000.00), the licensee may contract for and receive any finance charge agreed to in writing by the licensee and the insured.

(4) Notwithstanding the provisions of any premium finance agreement, any insured shall receive a refund of the unearned finance charge, based on the Rule of 78's, upon the voluntary

prepayment of the obligation in full or upon the cancellation of such contract. Where the amount of the refund credit is less than Three Dollars (\$3.00), no refund need be made.

Sources: Laws, 1992, ch. 569, § 8; Laws, 2004, ch. 450, § 8, eff from and after passage (approved Apr. 28, 2004.)

§ 81-21-17. Delinquency charges; collection costs.

(1) A premium finance agreement may provide for the payment by the insured of a delinquency charge of up to five percent (5%) of any installment which is in default for a period of more than five (5) days. If the premium finance agreement is primarily for personal, family or household purposes then the maximum delinquency charge shall be Fifteen Dollars (\$15.00). 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 of Fifteen Dollars (\$15.00). The agreement may also provide for a returned check fee of Fifteen Dollars (\$15.00) for each installment payment check returned by the bank.

(2) A premium finance agreement may provide for payment of collection costs and attorney's fees equal to twenty percent (20%) of the outstanding indebtedness if the premium finance agreement is referred for collection to a collection agency or to an attorney who is not a salaried employee of the premium finance company.

(3) None of the charges referred to in this section shall be considered, directly or indirectly, in determining whether a violation of the usury laws has occurred under a premium finance agreement.

SOURCES: Laws, 1992, ch. 569, § 9, eff from and after July 1, 1992.

§ 81-21-19. Cancellation of insurance contracts; notice.

(1) When a premium finance agreement contains a power of attorney clause enabling the 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 premium finance company unless such cancellation is done in accordance with this section.

(2) Not less than ten (10) days' written notice shall be mailed to the insured, at the last known address shown on the records of the premium finance company, of the intent of the premium finance company to cancel the insurance contract unless the default is cured within such ten-day period.

(3) After expiration of such ten-day period, the premium finance company may thereafter cancel such insurance contract or contracts by sending to the insurer a notice of cancellation. The insurance contract shall be cancelled as if such notice of cancellation had been submitted by the insured, but without requiring the return of the insurance contract or contracts. The premium finance company shall also mail a copy of the notice of cancellation to the insured at the last known address shown on the records of the premium finance company.

(4) 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 third party other than the insured shall apply where cancellation is effected under the provisions of this section. The insurer shall give the prescribed notice on behalf of itself or the insured to any governmental agency, mortgagee or other third party on or before the fifth business day after the day it receives the notice of cancellation from the premium finance company and shall determine the effective date of cancellation taking into consideration the number of days' notice required to complete the cancellation.

(5) No liability of any nature whatsoever either in favor of the insured, any governmental agency, mortgagee or third party shall be imposed upon the insurer as a result of any misstatement of fact contained in such notice of cancellation or statement furnished by the insurance premium finance company to the insurer.

SOURCES: Laws, 1992, ch. 569, § 10, eff from and after July 1, 1992.

§ 81-21-21. Return of unearned premiums to premium finance company; refund of excess to insured.

(1) Whenever a financed insurance contract is cancelled, the insurer shall return to the premium finance company as soon as reasonably possible whatever gross unearned premiums are due under the insurance contract.

(2) In the event that a premium is subject to an audit to determine the final premium amount, the gross unearned premium shall be calculated upon the deposit premium and the insurer shall return whatever gross unearned premiums are due based upon that deposit to the finance company for the account of the insured.

(3) In the event that the crediting of return premiums to the account of the insured results in a surplus over the amount due from the insured, the premium finance company shall refund such excess to the insured, provided that no such refund shall be required if it amounts to less than Three Dollars (\$3.00).

Sources: Laws, 1992, ch. 569, § 11; Laws, 1997, ch. 332, § 6; Laws, 1999, ch. 336, § 1; Laws, 2006, ch. 354, § 1, eff from and after passage (approved Mar. 13, 2006.)

§ 81-21-23. Filing of agreement unnecessary to perfect interest.

No filing of the premium finance agreement shall be necessary to perfect the validity of such agreement as a secured transaction as against creditors, subsequent purchasers, pledgees, encumbrancers, trustees in bankruptcy or any other insolvency proceeding under any law or anyone having the status or power of the aforementioned or their successors or assigns.

SOURCES: Laws, 1992, ch. 569, § 12, eff from and after July 1, 1992.

§ 81-21-25. Deposit of revenues in Consumer Finance Fund.

All revenues collected by or paid to the commissioner under the provisions of Section 81-21-9 shall be forwarded immediately to the State Treasurer, who shall deposit them into the special fund in the State Treasury designated as the "Consumer Finance Fund."

SOURCES: Laws, 1992, ch. 569, § 13, eff from and after July 1, 1992.

§ 81-21-27. Exclusions from coverage of chapter.

This chapter shall not apply to:

- (a) The financing of insurance premiums by any seller who sells goods or services pursuant to an installment sales contract in which a time price differential is charged, or to any savings and loan association, savings bank, bank, trust company, finance company, credit union or mortgage company;
- (b) Any insurance company, association or exchange authorized to do business in this state which solely finances the insurance premiums for its insurance policies, or a subsidiary of an authorized insurer admitted in this state or a corporation under substantially the same management or control as an admitted insurer or group of insurers, where such subsidiary, managed or controlled company is engaged in the business of financing insurance premiums on policies issued only by its parent insurer or affiliated group of insurers; and
- (c) Insurance agent or producing agent licensed to do business in this state who finances premiums on policies solely written by such agent or producing agent.

SOURCES: Laws, 1992, ch. 569, § 14; Laws, 1997, ch. 332, § 7, eff from and after passage (approved March 17, 1997).