SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

Date: February 3, 1998 Revised: ________ ________ ________ ________

Subject: Premium Finance Agreements

	Analyst	Staff Director	Reference	Action
1.	Emrich	Deffenbaugh	BI	Favorable
2.				
3.				
4.				
5.				

I. Summary:

This bill clarifies the law as to the “timeliness” of premium finance installment payments delivered via the mail. The bill provides that installment payments under premium finance agreements are deemed timely if postmarked on or before the due date. The bill is proposed in response to disputes over the mailing and receipt of premium finance payments.

This bill amends section 627.841, Florida Statutes.

II. Present Situation:

Part XV of chapter 627, F.S., establishes the regulatory and operational framework for premium finance companies. Such companies finance insurance policies, primarily auto and commercial policies, and in return receive periodic installment payments from insureds that include interest in the amount advanced and a service charge that is limited by law. Premium finance companies enter into premium finance agreements with insureds under which the insured promises to pay to a company the amount advanced.

Section 627.841, F.S., refers to delinquency, collection, cancellation, check return charges and attorney’s fees with respect to premium finance agreements. That provision allows finance companies to charge a delinquency and collection (late fee) charge on each installment payment that is in default for a period of not less than 5 days after the due date. The effect of this provision is to give the insured a 5 day grace period within which the insured can mail in the installment payment. If a late fee is imposed, it may not exceed $10, or 5 percent of the delinquent installment, whichever is greater. However, if the finance agreement is primarily for personal, family, or household purposes, the late charge can not exceed $10. Only one late charge can be collected per delinquent installment payment.

For example, under Insured A's premium finance agreement with premium finance company B, A's installment payment has a due date of January 1. Company B must receive A's installment payment by January 5th (5 day grace period begins after due date) for A to avoid a late fee.

Pursuant to s. 627.848(1)(a)1, F.S., when an installment payment is past due, the insurance policy may not be canceled by the premium finance company until notice of the intent to cancel is mailed to the insured. This notice must be mailed to the insured in not less than 10 days after the installment payment is in default. The insured then has 10 days within receipt of the notice to make the installment payment.

According to the Department of Insurance, there are 237 premium finance companies in Florida.

III. Effect of Proposed Changes:

SB 412 changes the method of determining when an installment payment sent via the mail is in default. Instead of allowing premium finance companies to treat any installment payment not "received" within 5 days after the due date as late for purposes of imposing a late charge, the bill mandates that installment payments are timely if "postmarked" on or before the due date, no matter when such payments are received by the finance company. Thus, the effect of this bill is to eliminate time of receipt as an issue. Furthermore, the 5 day grace period is not affected by this bill.

For example, if Insured A's premium is due on January 1, A's installment payment is timely if postmarked on or before January 1, even if Company B receives it on the 20th. Additionally, if A mails the installment payment after the due date, but it is received by January 5th, the payment is still timely because of the 5 day grace period.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Insureds will benefit under this bill because it will eliminate their uncertainty as to whether or not an installment payment will be received in time to avoid a late fee. The bill will eliminate disagreements about when the installment payment is received.

Representatives from the premium finance association indicate that the bill will not adversely impact their industry.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Last session, an identical bill (HB 363 by Representative Melvin) passed the House and is currently on the House Consent Calendar.

VIII. Amendments:

None.