

LC02209/SUB A

# STATE OF RHODE ISLAND

## IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2003

### A N A C T

#### RELATING TO INSURANCE - INSURANCE PREMIUM FINANCE AGREEMENTS

Introduced By: Representative Robert A. Watson

Date Introduced: February 12, 2003

Referred To: House Corporations

It is enacted by the General Assembly as follows:

SECTION 1. Chapter 27-40 of the General Laws entitled "Insurance Premium Finance Agreements" is hereby repealed in its entirety.

#### ~~CHAPTER 27-40~~

#### ~~Insurance Premium Finance Agreements~~

~~**27-40-1. Short title.** -- This chapter may be cited as the "Insurance Premium Finance Act".~~

~~**27-40-2. Definitions.** -- As used in this chapter:~~

~~(1) "Director" means the director of business regulation.~~

~~(2) "Insurance premium finance agreement"; referred to in this chapter as "agreement", means an agreement by which an insured, or prospective insured, promises to pay to an insurance premium finance company the amount advanced or to be advanced, under the agreement to an insurer or to an insurance producer, in payment of a premium or premiums on an insurance contract or contracts, together with interest and a service charge, as authorized and limited by this chapter;~~

~~(3) "Insurance premium finance company", referred to in this chapter as "company", means a person engaged in the business of entering into insurance premium finance agreements, as defined in subdivision (2) of this section, or acquiring insurance premium finance agreements from other insurance premium finance companies;~~

~~(4) "Licensee" means an insurance premium finance company holding a license issued~~

1 and existing by virtue of and pursuant to chapter 14.1 of title 19; and

2 ~~(5) "Person" means an individual, partnership, association, business corporation,~~  
3 ~~nonprofit corporation, common law trust, joint stock company; or any other group of individuals~~  
4 ~~howsoever lawfully organized.~~

5 ~~**27-40-3. Licensee's maintenance and preservation of records -- Examination by**~~  
6 ~~**director.**~~ ~~--- (a) Every licensee shall maintain records of its insurance premium finance~~  
7 ~~transactions, and the records shall be available for examination and investigation by the director.~~  
8 ~~The director may, at any time during regular business hours of the licensee, examine the records~~  
9 ~~of the licensee at any location at which the records are maintained.~~

10 ~~(b) Every licensee shall preserve records of the insurance premium finance transactions,~~  
11 ~~including cards used in a card system, if any, for at least two (2) years after the final entry is made~~  
12 ~~with respect to an agreement. Preservation of the records on photographs, microfilm,~~  
13 ~~microfiche, or similar media shall constitute compliance with this section.~~

14 ~~**27-40-4. Form of agreement.**~~ ~~--- (a) Every agreement shall:~~

15 ~~(1) Be dated and signed by, or on behalf of, the insured, and the printed portion of it shall~~  
16 ~~be in at least eight (8) point type;~~

17 ~~(2) Contain the names and place of business of the insurance producer negotiating the~~  
18 ~~insurance contract or contracts to which the agreement relates, the name and residence, or place~~  
19 ~~of business, of the insured, as specified by the insured, the name and place of business of the~~  
20 ~~company to which payments under the agreement are to be made, a brief description of the~~  
21 ~~insurance contract, or contracts, and the amount of the premium or premiums for the contract; and~~

22 ~~(3) Set forth the following items where they are applicable:~~

23 ~~(i) The total amount of the premium or premiums;~~

24 ~~(ii) The amount of the down payment;~~

25 ~~(iii) The principal balance, the difference between paragraphs (i) and (ii) of this~~  
26 ~~subdivision;~~

27 ~~(iv) The amount of interest to be charged;~~

28 ~~(v) The balance payable by the insured, sum of paragraphs (iii) and (iv) of this~~  
29 ~~subdivision; and~~

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

32 ~~(b) The items set forth in subdivision (a)(3) of this section do not need to be stated in the~~  
33 ~~sequence in which they appear in subdivision (a)(3) of this section, and additional items may be~~  
34 ~~included to explain computations made in determining the amount to be paid by the insured.~~

~~**27-40-5. Limitation on interest and other charges.**~~ (a) A company shall not charge, contract for, receive, or collect an interest or discount charge other than as provided by this chapter.

~~(b) Interest is to be computed on the balance of the premium or premiums due, after subtracting the down payment made by the insured in accordance with the agreement, from the effective date of the insurance contract, for which the premium or premiums is or are being advanced, to and including the date when the final installment provided for in the agreement is due and payable.~~

~~(c) Interest shall not exceed that specified in section 6-26-2. A service charge of fifteen dollars (\$15.00) per agreement, which need not be refunded upon cancellation or prepayment, may be imposed. The interest provided for by this chapter anticipates timely repayment, in consecutive equal monthly installments, for a period of one year. With respect to contractual arrangements for repayment in greater or lesser periods, or in unequal, irregular, or other than monthly installments, interest may be computed at an equivalent effective rate, having due regard for timely payments of installments.~~

~~(d) Notwithstanding the provisions of any agreement, an insured may prepay the obligation in full at any time. In that event, the insured shall receive a refund credit. The refund credit shall represent at least as great a proportion of the interest as the sum of the periodic balances following the month in which prepayment is made bears to the sum of all periodic balances under the schedule of installments in the agreement. If the amount of a refund credit is less than one dollar (\$1.00), no actual refund need be made.~~

~~**27-40-6. Delinquency and cancellation charges.**~~ (a) An agreement may provide for payment by the insured of a delinquency charge ranging from one dollar (\$1.00) to a maximum of five percent (5%) of an installment that is in default for a period of five (5) days or more.

~~(b) The agreement may provide for payment by the insured of a cancellation charge of fifteen dollars (\$15.00), if the default results in cancellation of any insurance contract or contracts listed in the agreement.~~

~~(c) An agreement may also provide for payment, upon default, of reasonable costs of collection, including reasonable attorneys' fees.~~

~~(d) 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 an agreement.~~

~~**27-40-7. Cancellation of insurance contract upon default.**~~ (a) When an agreement contains a power of attorney enabling the company to cancel an insurance contract or contracts listed in the agreement, the insurance contract or contracts shall not be cancelled by the company

1 ~~unless the cancellation is effectuated in accordance with this section.~~

2 ~~(b) Not less than ten (10) days written notice shall be mailed to the insured, at his or her~~  
3 ~~last known address, as shown on the records of the company, of the intention of the company to~~  
4 ~~cancel the insurance contract or contracts unless the default is removed within the ten (10) day~~  
5 ~~period.~~

6 ~~(c) After expiration of the ten (10) day period, the company may cancel the insurance~~  
7 ~~contract or contracts by mailing a notice of cancellation to the insurer. The insurance contract or~~  
8 ~~contracts shall be cancelled as if notice of cancellation had personally been submitted by the~~  
9 ~~insured, but without requiring return of the insurance contract or contracts. The company shall~~  
10 ~~also mail a notice of cancellation to the insured at his or her last known address as shown on the~~  
11 ~~records of the company. The insurance contract or contracts shall be cancelled by the insurer on a~~  
12 ~~pro rata basis.~~

13 ~~(d) All statutory, regulatory, and contractual restrictions providing that an insurance~~  
14 ~~contract may not be cancelled unless notice is given to a particular governmental agency,~~  
15 ~~mortgagee, or other third party shall be applicable to any cancellation effected under the~~  
16 ~~provisions of this section. The insurer shall give the prescribed notice on behalf of itself or the~~  
17 ~~insured to any governmental agency, mortgagee, or other third party on or before the second~~  
18 ~~business day after the day it receives notice of cancellation from the company, and shall~~  
19 ~~determine the effective date of cancellation, taking into consideration the number of days' notice~~  
20 ~~required to complete the cancellation.~~

21 ~~**27-40-8. Return premiums.** — Whenever a financed insurance contract or contracts is~~  
22 ~~cancelled, the insurer shall return the gross unearned premium or premiums, if any, that may be~~  
23 ~~due under the insurance contract or contracts, directly to the company for the account of the~~  
24 ~~insured, as soon as reasonably possible, but, in no event, shall the period for the return exceed~~  
25 ~~sixty (60) days after the effective date of cancellation. In the event that crediting of a return~~  
26 ~~premium or premiums to the account of an insured results in a surplus over the amount due from~~  
27 ~~the insured, the company shall refund the excess to the insured, provided that no refund shall be~~  
28 ~~required if the refund amounts to less than one dollar (\$1.00).~~

29 ~~**27-40-9. Exemption from filing requirements.** — Filing of the agreement shall not be~~  
30 ~~necessary to perfect its validity, as a secured transaction against creditors, subsequent purchasers,~~  
31 ~~pledgees, encumbrancers, trustees in bankruptcy, or other insolvency proceeding under any law,~~  
32 ~~or any person having the status, power, or authority of these, or their successors or assigns.~~

33 SECTION 2. Section 19-14-1 of the General Laws in Chapter 19-14 entitled "Licensed  
34 Activities" is hereby amended to read as follows:

1           **19-14-1. Definitions.** -- For purposes of this chapter and chapters 14.1, 14.2, 14.3, 14.4  
2 ~~and 14.4~~ and 14.6 of this title:

3           (1) "Check" means any check, draft, money order, personal money order, or other  
4 instrument for the transmission or payment of money. For the purposes of check cashing,  
5 travelers checks or foreign denomination instruments shall not be considered checks. "Check  
6 cashing" means providing currency for checks;

7           (2) "Deliver" means to deliver a check to the first person who in payment for the check  
8 makes or purports to make a remittance of or against the face amount of the check, whether or not  
9 the deliverer also charges a fee in addition to the face amount, and whether or not the deliverer  
10 signs the check;

11           (3) "Electronic money transfer" means receiving money for transmission within the  
12 United States or to locations abroad by any means including, but not limited to, wire, facsimile or  
13 other electronic transfer system;

14           (4) (i) "Lender" means any person who makes or funds a loan within this state with the  
15 person's own funds, regardless of whether the person is the nominal mortgagee or creditor on the  
16 instrument evidencing the loan;

17           (ii) A loan is made or funded within this state if any of the following conditions exist:

18           (A) The loan is secured by real property located in this state;

19           (B) An application for a loan is taken by an employee, agent, or representative of the  
20 lender within this state;

21           (C) The loan closes within this state; or

22           (D) The loan solicitation is done by an individual with a physical presence in this state,  
23 ~~acting in the capacity of an employee, agent, or representative of the lender.~~

24           (iii) The term "lender" shall also include any person engaged in a transaction whereby  
25 the person makes or funds a loan within this state using the proceeds of an advance under a line  
26 of credit over which proceeds the person has dominion and control and for the repayment of  
27 which the person is unconditionally liable. This transaction is not a table funding transaction. A  
28 person is deemed to have dominion and control over the proceeds of an advance under a line of  
29 credit used to fund a loan regardless of whether:

30           (A) The person may, contemporaneously with or shortly following the funding of the  
31 loan, assign or deliver to the line of credit lender one or more loans funded by the proceeds of an  
32 advance to the person under the line of credit;

33           (B) The proceeds of an advance are delivered directly to the settlement agent by the line  
34 of credit lender, unless the settlement agent is the agent of the line of credit lender;

(C) One or more loans funded by the proceeds of an advance under the line of credit is purchased by the line of credit lender; or

(D) Under the circumstances as set forth in regulations adopted by the director or the director's designee pursuant to this chapter;

(5) "Licensee" means an entity licensed under this chapter;

(6) "Loan" means any advance of money or credit including, but not limited to:

(i) Loans secured by mortgages;

(ii) Insurance premium finance ~~contracts;~~ agreements;

(iii) The purchase or acquisition of retail installment contracts or advances to the holders of those contracts;

(iv) Educational loans;

(v) Any other advance of money; or

(vi) Any transaction such as those commonly known as "pay day loans," "pay day advances," or "deferred presentment loans," in which a cash advance is made to a customer in exchange for the customer's personal check, or in exchange for the customer's authorization to debit the customer's deposit account, and where the parties agree either that the check will not be cashed or deposited, or that customer's deposit account will not be debited, until a designated future date.

(7) "Loan broker" means any person who, for compensation or gain, or in the expectation of compensation or gain, either directly or indirectly, solicits, processes, negotiates, places or sells a loan within this state for others in the primary market, or offers to do so. A loan broker shall also mean any person who is the nominal mortgagee or creditor in a table funding transaction. A loan is brokered within this state if any of the following conditions exist:

(i) The loan is secured by real property located in this state;

(ii) An application for a loan is taken by an employee, agent or representative of the loan broker within this state;

(iii) The loan closes within this state; or

(iv) The loan solicitation is done by an individual with a physical presence in this state ~~acting in the capacity of an employee, agent, or representative of the loan broker.~~

(8) "Personal money order" means any instrument for the transmission or payment of money in relation to which the purchaser or remitter appoints or purports to appoint the seller as his or her agent for the receipt, transmission, or handling of money, whether the instrument is signed by the seller or by the purchaser or remitter or some other person;

(9) "Primary market" means the market in which loans are made to borrowers by lenders,

whether or not through a loan broker or other conduit;

(10) "Principal owner" means any person who owns, controls, votes or has a beneficial interest in, directly or indirectly, ten percent (10%) or more of the outstanding capital stock of a licensee;

(11) "Sell" means to sell, to issue, or to deliver a check;

(12) "Small loan" means a loan of less than five thousand dollars (\$5,000), not secured by real estate, made pursuant to the provisions of chapter 14.2 of this title;

(13) "Small loan lender" means a lender engaged in the business of making small loans within this state;

(14) "Table funding transaction" means a transaction in which there is a contemporaneous advance of funds by a lender and an assignment by the mortgagee or creditor of the loan to the lender;

(15) "Check casher" means a person or entity that, for compensation, engages, in whole or in part, in the business of cashing checks; ~~and~~

(16) "Deferred deposit transaction" means any transaction such as those commonly known as "pay-day loans," "pay-day advances," or "deferred presentment loans" in which a cash advance is made to a customer in exchange for the customer's personal check or in exchange for the customer's authorization to debit the customer's deposit account and where the parties agree either that the check will not be cashed or deposited, or that the customer's deposit account will not be debited until a designated future date; ;

(17) "Insurance premium finance agreement" means an agreement by which an insured, or prospective insured, promises to pay to an insurance premium finance company the amount advanced or to be advanced, under the agreement to an insurer or to an insurance producer, in payment of a premium or premiums on an insurance contract or contracts, together with interest and a service charge, as authorized and limited by this title;

(18) "Insurance premium finance company" means a person engaged in the business of making insurance premium finance agreements or acquiring insurance premium finance agreements from other insurance premium finance companies; and

(19) "Simple interest" means interest computed on the principal balance outstanding immediately prior to a payment for the actual number of days between payments made on a loan over the life of a loan.

SECTION 3. Section 19-14.1-2 of the General Laws in Chapter 19-14.1 entitled "Lenders and Loan Brokers" is hereby amended to read as follows:

**19-14.1-2. Maximum rate of interest.** – (a) Every lender may lend or loan broker may

negotiate the lending of any sum of money and may charge, contract for and receive points, fees, charges and interest on the unpaid balance of the loan at a rate not to exceed that provided in section 6-26-2, or as otherwise permitted under applicable federal law or regulation.

(b) Rebates of finance charges on precomputed loans, made for an original term of sixty (60) months or less, may be calculated on the method commonly referred to as the rule of 78 or sum of the digits. Rebates of finance charges on precomputed loans, made for an original term greater than sixty (60) months, must be calculated on the simple interest method. ~~at least the amount as would be produced by the application of the rule of anticipation.~~

SECTION 4. Title 19 of the General Laws entitled "Financial Institutions" is hereby amended by adding thereto the following chapter:

#### CHAPTER 14.6

#### INSURANCE PREMIUM FINANCE AGREEMENTS

##### **19-14.6-1. Form of agreement. - - (a) Every agreement shall:**

(1) Be dated and signed by, or on behalf of, the insured, and the printed portion thereof shall be in at least eight (8) point type;

(2) Contain the names and place of business of the insurance producer negotiating the insurance contract or contracts thereto relating, the name and residence, or place of business, of the insured, as specified by the insured, the name and place of business of the company to which payments under the agreement are to be made, a brief description of the insurance contract or contracts, and the amount of the premium or premiums therefore; and

(3) Set forth following items where they are applicable;

(i) The total amount of the premium or premiums;

(ii) The amount of the down payment;

(iii) The principal balance, the difference between (i) and (ii);

(iv) The amount of interest to be charged;

(v) The balance payable by the insured, sum of items (iii) and (iv); and

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

(b) The items set forth in subsection (a)(3) need not be stated in the sequence in which they appear in subsection (a)(3), and additional items may be included to explain computations made in determining the amount to be paid by the insured.

**19-14.6-2. Limitation on interest and other charges. - - (a) An insurance premium finance company shall not charge, contract for, receive or collect any interest or discount charges at a rate in excess of that provided in section 6-26-2.**



1       **(b) Interest on any insurance premium finance agreement is to be computed on the**  
2 **balance of the premium or premiums due, after subtracting the down payment made by the**  
3 **insured in accordance with the agreement, from the effective date of the insurance contract, for**  
4 **which the premium or premiums is or are being advanced, to and including the date when the**  
5 **final installment provided for in the agreement is due and payable. The interest so provided for by**  
6 **this chapter anticipates timely repayment, in consecutive equal monthly installments, for a period**  
7 **of one year. With respect to contractual arrangements for repayment in greater or lesser periods,**  
8 **or in unequal, irregular, or other than monthly installments, interest may be computed at an**  
9 **equivalent effective rate, likewise, having due regard for timely payments of installments.**

10       **(c) A service charge of fifteen dollars (\$15.00) per insurance premium finance agreement,**  
11 **which need not be refunded upon cancellation or prepayment, may be imposed as long as the**  
12 **imposition of said service charge does not cause the total charges provided for in the agreement to**  
13 **exceed that specified in section 6-26-2.**

14       **(d) Notwithstanding the provisions of any agreement, an insured may prepay the**  
15 **obligation in full at any time. In that event, the insured shall receive a refund credit. The refund**  
16 **credit shall represent at least as great a proportion of the interest as the sum of the periodic**  
17 **balances following the month in which prepayment is made bears the sum of all periodic balances**  
18 **under the schedule of installments in the agreement. If the amount of a refund credit is less than**  
19 **one dollar (\$1.00), no actual refund need be made.**

20       **19-14.6-3. Delinquency and cancellation charges. - - (a) An insurance premium finance**  
21 **agreement may provide for payment by the insured of a delinquency charge ranging from one**  
22 **dollar (\$1.00) to a maximum of five percent (5%) of an installment which is in default for a**  
23 **period of five (5) days or more.**

24       **(b) The agreement may provide for payment by the insured of a cancellation charge of**  
25 **fifteen dollars (\$15.00), if the default results in cancellation of any insurance contract or contracts**  
26 **listed in the agreement.**

27       **(c) An agreement may also provide for payment, upon default, of reasonable costs of**  
28 **collection, including reasonable attorneys' fees.**

29       **(d) none of the charges referred to in this section shall be considered directly or indirectly**  
30 **in determining whether a violation of the usury laws has occurred under an agreement.**

31       **19-14.6-4. Cancellation of insurance contract upon default. - - (a) When an insurance**  
32 **premium finance agreement contains a power of attorney enabling the company to cancel an**  
33 **insurance contract or contracts listed in the agreement, the insurance contract or contracts shall**  
34 **not be cancelled by the company unless the cancellation is effectuated in accordance with this**

1 section.

2 (b) Not less than ten (10) days written notice shall be mailed to the insured, at his or her  
3 last known address, as shown on the records of the company, of the intention of the company, to  
4 cancel the insurance contract or contracts unless the default is removed within the ten (10) day  
5 period.

6 (c) After expiration of the ten (10) day period, the company may cancel the insurance  
7 contract or contracts by mailing to the insurer a notice of cancellation. The insurance contract or  
8 contracts shall be cancelled as if notice of cancellation had been submitted by the insured  
9 personally, but without requiring return of the insurance contract or contracts. The company shall  
10 also mail a notice of cancellation to the insured at his or her last known address as shown on the  
11 records of the company. The insurance contract or contracts shall be cancelled by the insurer on a  
12 pro rata basis.

13 (d) All statutory, regulatory, and contractual restrictions providing that an insurance  
14 contract may not be cancelled unless notice be given to a particular governmental agency,  
15 mortgagee, or other third party shall be applicable to any cancellation effected under the  
16 provisions of this section. The insurer shall give the prescribed notice on behalf of itself or the  
17 insured to any governmental agency, mortgagee, or other third party on or before the second  
18 business day after the day it receives notice of cancellation from the company, and shall  
19 determine the effective date of cancellation, taking into consideration the number of days notice  
20 required to complete the cancellation.

21 **19-14.6-5. Return premiums. - -** Whenever a financed insurance contract or contracts is  
22 cancelled, the insurer shall return the gross unearned premium or premiums, if any, that may be  
23 due under the insurance contract or contracts, directly to the insurance premium finance company  
24 for the account of the insured, as soon as reasonably possible, but, in no event, shall the period for  
25 the return exceed sixty (60) days after the effective date of cancellation. In the event that crediting  
26 of a return premium or premiums to the account of an insured results in a surplus over the amount  
27 due from the insured, the insurance premium finance company shall refund the excess to the  
28 insured, provided that no refund shall be required if the refund amounts to less than one dollar  
29 (\$1.00).

30 **19-14.6-6. Exemption from filing requirements. -** Filing of the insurance premium  
31 finance agreement shall not be necessary to perfect validity thereof, as a secured transaction  
32 against creditors, subsequent purchasers, pledgees, encumbrancers, trustees in bankruptcy, or  
33 other insolvency proceeding under any law or any person having the status, power, or authority of  
34 the aforementioned, or their successors or assigns.

1           SECTION 5. This act shall take effect upon passage.

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LC02209/SUB A

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EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF  
A N A C T  
RELATING TO INSURANCE - INSURANCE PREMIUM FINANCE AGREEMENTS

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1           This act would repeal chapter 27-40, would enact a new chapter relative to insurance  
2   premium finance agreements in title 19 and would replace the rule of anticipation as a means for  
3   rebating finance charges on precomputed loans with a simple interest rebate method and broadens  
4   the applicability of the lender and loan brokering licensing provisions to any person with a  
5   physical presence in this state.

6           This act would take effect upon passage.

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