

## **CHAPTER 26.1-20.1 INSURANCE PREMIUM FINANCE COMPANIES**

### **26.1-20.1-01. Definitions.**

In this chapter, unless the context otherwise requires:

1. "Insurance premium finance company" means a person engaged in the business of entering into or acquiring insurance premium finance agreements.
2. "Licensee" means a person holding a license issued under this chapter.
3. "Premium finance agreement" means an agreement by which an insured or prospective insured promises to pay 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 premiums on an insurance policy together with a finance charge. The term does not include an agreement to finance premiums when a life or disability insurance policy is made the security or collateral for the repayment of a debt.

### **26.1-20.1-02. License required - Renewal - Application.**

1. No person may finance insurance premiums in this state without a license issued by the commissioner. Licenses may be renewed each year upon payment of the required fee.
2. The commissioner shall issue or renew a license if the commissioner finds that the person to be licensed:
  - a. Is competent and trustworthy and intends to act in good faith in the financing of insurance premiums;
  - b. Has a good business reputation and has had experience, training, or education qualifying the person to finance insurance premiums; and
  - c. If a corporation, is incorporated under the laws of this state or is a foreign corporation authorized to transact business in this state or if a limited liability company, is organized under the laws of this state or is a foreign limited liability company authorized to transact business in this state.
3. This chapter does not apply to insurance producers; insurers who finance their own premiums; banks; savings and loan associations; credit unions; annuity, safe deposit, and trust companies; subsidiary trust companies; small loan companies; licensed money brokers; or other financial institutions licensed to do business in this state.

### **26.1-20.1-03. License suspension, revocation, or refusal - Grounds.**

The commissioner may, after notice to the licensee and a hearing, suspend, revoke, or refuse to continue or refuse to issue any license issued under this chapter if the commissioner finds any of the following conditions:

1. The licensee acquired or attempted to acquire a license through misrepresentation or fraud.
2. The licensee, in the conduct of affairs under the license, used fraudulent, coercive, or dishonest practices, or has shown oneself to be incompetent, untrustworthy, or financially irresponsible.
3. An officer, employee, stockholder, or partner of an applicant, who may materially influence the applicant's conduct, does not meet the standards required by this chapter.
4. The licensee violated or did not comply with this chapter or a lawful rule or order of the commissioner.

### **26.1-20.1-04. Interrogatories.**

A person who applies for a license or the renewal of a license shall file sworn answers to interrogatories if requested by the commissioner. The commissioner may, at any time, require the applicant to fully disclose the identity of all stockholders, partners, officers, and employees.

**26.1-20.1-05. Books and records.**

Every licensee shall maintain books and records, satisfactory to the commissioner, of the licensee's premium finance agreements. The records must be maintained for a period of three years after making the final entry with respect to a premium finance agreement. The records may be preserved in photographic form. The records must be available for inspection by the commissioner during ordinary business hours. The commissioner may require any licensee to bring the licensee's records to the commissioner's office for examination.

**26.1-20.1-06. Contents of insurance premium finance agreement.**

1. A premium finance agreement must:
  - a. Be dated and signed by or on behalf of the insured, and the printed portion of the agreement must be in at least eight-point type;
  - b. Contain the name and place of business of the insurance producer negotiating the related insurance policy, the name and residence or the place of business of the insured as specified by the insured, the name and place of business of the insurance premium finance company to which installments or other payments are to be made, a description of the insurance policies financed, including the term and type of policy; and
  - c. Include the following items:
    - (1) The total amount of the premiums.
    - (2) The amount of the downpayment.
    - (3) The amount financed, which is the difference between paragraphs 1 and 2.
    - (4) The amount of the finance charge and the flat service fee, if any.
    - (5) The total of the payments, which is the sum of paragraphs 3 and 4.
    - (6) The number of installments.
2. If additional or subsequent premiums are proposed to be added to an existing premium finance agreement by an insured resulting from additional premiums required under policies presently being financed, from a renewal of a policy, or from other policies owned or purchased by the insured, the premium finance company shall provide the insured with the proposed revisions to the items in subdivision c of subsection 1 in writing along with a written invoice or copy of the invoice received from the insurer or licensed insurance producer which describes the additional premium proposed to be added to the original contract. The insured shall affirm the proposed revisions by paying the revised installment or may disaffirm the add-on revisions by continuing to make the payment called for in the original contract. The premium finance company may not charge a higher annual percentage rate of interest for the additional amount than that charged in the original premium finance agreement.

**26.1-20.1-07. Maximum finance charge.**

1. No insurance premium finance company may charge, contract for, receive, or collect a finance charge plus a flat service fee with respect to a premium finance agreement other than as permitted by this section.
2. The finance charge must be computed on the premiums due after subtracting the downpayment made by the insured in accordance with the premium finance agreement, from the effective date of the insurance coverage for which the premiums are being advanced, to and including the date when the final installment under the premium finance agreement is payable.
3. The annual percentage rate charged under a premium finance agreement made to finance an insurance policy for agricultural, personal, family, or household use may not exceed the annual percentage rate permitted under section 47-14-09. In addition, an insurance premium finance company may contract for a flat rate service or application fee not exceeding the greater of one percent of the amount financed or twenty dollars per premium finance agreement for expenses incurred in servicing the loan. The finance rate and flat rate service or application fee charged under a premium finance agreement made to finance an insurance policy for business, corporate, or other purposes may be agreed to by the parties to the agreement.

4. The finance charge must be computed in advance on the principal balance of a premium finance agreement according to the actuarial method on terms payable in substantially equal successive monthly installments.
5. Notwithstanding the provisions of any premium finance agreement, any insured may prepay the obligation in full at any time. If the insured prepays the obligation, the insured must receive a refund credit if the amount of the refund is one dollar or more. The amount of the refund credit must represent at least as great a proportion of the finance charge as the sum of the periodic balances after the month in which prepayment is made bears to the sum of all periodic balances under the schedule of installments in the agreement. If, in addition to the finance charge, an additional flat service fee was imposed, the flat service fee need not be refunded nor taken into consideration in computing the refund credit.

**26.1-20.1-08. Delinquency and cancellation charges.**

A premium finance agreement may provide for the payment by the insured of a delinquency charge for any payment that is in default for a period of ten days or more. The amount of the delinquency charge may not exceed five dollars. If the default results in the cancellation of any insurance policy listed in the premium finance agreement, the premium finance agreement may provide for a cancellation charge of ten dollars in addition to the delinquency charge.

**26.1-20.1-09. Cancellation of insurance contract upon default.**

If a premium finance agreement contains a power of attorney or other authority enabling the insurance premium finance company to cancel any insurance policy listed in the premium finance agreement, an insurance policy may be canceled by the insurance premium finance company as follows:

1. The insurance premium finance company shall mail to the insured and to the insurance producer indicated on the premium finance agreement at least ten days' written notice of the insurance premium finance company's intent to cancel the insurance policy unless the default is cured prior to the date stated in the notice. If the default is not cured by the date specified in the notice, the insurance premium finance company may cancel on behalf of the insured by mailing to the insurer written notice of the cancellation. The insurance policy must be canceled as if the notice of cancellation had been submitted by the insured, but without requiring the return of the insurance policy. The notice may be mailed by the insurance premium finance company to the insurer at the address on the premium finance agreement or on file with the commissioner. The insurance premium finance company shall also mail a notice of cancellation to the insured at the insured's last-known address and to the insurance producer indicated on the premium finance agreement.
2. If statutory, regulatory, or contractual restrictions provide that an insurance policy may not be canceled unless notice is given to a governmental agency, mortgagee, or other third party, the insurer shall give the prescribed notice on behalf of itself or the insured to the governmental agency, mortgagee, or other third party within a reasonable time after the insurer receives the notice of cancellation from the insurance premium finance company. The insurance policy must be continued beyond the date of cancellation requested by the premium finance company until the date specified by the insurance company in the prescribed notice.

**26.1-20.1-10. Application of unearned premiums.**

1. Whenever a financed insurance policy or assigned risk policy is canceled, the insurer shall return whatever gross unearned premiums, computed on a pro rata basis, are due under the insurance policy or assigned risk policy to the insurance premium finance company for the account of the insured. The unearned premiums must be returned within thirty days after the date of cancellation. This action by the insurer satisfies the insurer's obligation under the insurance policy or assigned risk policy to return unearned premiums.

2. If a premium is subject to an audit to determine the final premium amount, the gross unearned premium must be calculated upon the premium deposited and the insurer shall return whatever gross unearned premiums are due based upon the deposit rather than the actual unearned premium to the insurance premium finance company for the account of the insured or insureds.
3. If the crediting of returned premiums to the account of the insured results in a surplus over the amount due from the insured, the insurance premium finance company must refund any amount of one dollar or more to the insured within thirty days after receipt of the returned premium.

**26.1-20.1-11. Exemption from filing.**

No filing or recording of an insurance premium finance agreement is necessary to perfect the validity of the agreement as a secured transaction against creditors, subsequent purchasers, pledgees, encumbrances, successors, or assigns.

**26.1-20.1-12. Application to premium finance agreements.**

This chapter applies to premium finance agreements and amendments to existing premium finance agreements executed after July 1, 1989.