

HOUSE BILL 857

IN THE HOUSE

February 17, 1979	Introduced and referred to Committee on Business & Industry
February 20, 1979	Committee recommend bill, do not pass.
February 21, 1979	Report adopted.

1 House BILL NO. 857
 2 INTRODUCED BY Gaydos
 3

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO PERMIT AND REGULATE
 5 FINANCING OF INSURANCE PREMIUMS."
 6

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

8 Section 1. Short title. [This act] may be cited as the
 9 "Insurance Premium Financing Act of 1979".

10 Section 2. Definitions. As used in [this act], the
 11 following definitions apply:

12 (1) "Company" means a premium finance agency.

13 (2) "Finance charge" means any amount that the insured
 14 agrees to pay the company in excess of the premium and fees
 15 charged by the insurer or producer and exclusive of the cost
 16 of credit life insurance and attorney fees.

17 (3) "Insured" means the person, firm, or organization
 18 that purchases or arranges to purchase an insurance contract
 19 on open account through the office of a duly licensed
 20 insurance agent or that enters into a premium finance
 21 agreement with the company writing the coverage or a premium
 22 finance agreement with a premium finance company.

23 (4) "Premium financing" means the activities of a duly
 24 licensed agent advancing premiums directly to an insurer on
 25 behalf of an insured.

1 (5) "Principal balance" means the difference between
 2 the amount of the premium and fees charged by the insurer or
 3 producer and the down payment on the premium.

4 Section 3. Premium finance agreement. (1) A premium
 5 finance agreement includes a loan contract, note, agreement,
 6 or obligation wherein an insured agrees to pay to a company
 7 in installments the principal amount advanced by the company
 8 to an insurer or producer in payment of premium on an
 9 insurance contract or contracts, plus charges, with the
 10 assignment as security therefor of the unearned premiums,
 11 accrued dividends, or loss payments, the final installment
 12 due date of the agreement not to extend beyond the term of
 13 the insurance contract included in the agreement having the
 14 latest expiration date.

15 (2) A premium finance agreement may not include the
 16 financing of insurance contract premiums purchased in
 17 connection with the financing of goods or services.

18 Section 4. Direct or indirect financing permitted.
 19 With respect to a premium finance agreement, the insurer
 20 writing the coverage may write such coverage under a direct
 21 finance agreement or a company engaging in the business of
 22 advancing money may advance money directly or indirectly to
 23 an insurer, at the request of an insured, pursuant to the
 24 terms of a premium finance agreement.

25 Section 5. Security for advancements under a premium

1 finance agreement. Under a premium finance agreement the
 2 insured assigns the unearned premiums, accrued dividends, or
 3 loss payments as security for the advancements in payment of
 4 premiums on an insurance contract.

5 Section 6. Amount of advancement allowed. The amount
 6 of an advancement on payment of premiums under a premium
 7 finance agreement shall bear a reasonable relationship to
 8 the premium or premiums that are being financed.

9 Section 7. Form and contents. (1) A premium finance
 10 agreement shall be in writing, and the printed portion
 11 thereof shall be in at least 8-point type. The agreement
 12 shall set forth:

13 (a) the names and addresses of the insured and the
 14 company, and the date of the agreement;

15 (b) a description of the insurance contracts for which
 16 the premiums are advanced, including the total amount of the
 17 premiums and fees and a specific breakdown thereof by
 18 policies and a general description of coverages;

19 (c) the amount of the downpayment;

20 (d) the costs, if any, for credit life insurance;

21 (e) the principal balance;

22 (f) the finance charges;

23 (g) the unpaid balance;

24 (h) the due date of the first installment;

25 (i) the number, amount, and frequency of payment of

1 the installments; and

2 (j) a statement that the insured may prepay the full
 3 amount due and receive a rebate of a portion of the finance
 4 charge.

5 Section 8. Prohibition on blank spaces -- exception.
 6 (1) No premium finance agreement may be executed by or on
 7 behalf of the insured when it contains any blank space to be
 8 filled in thereafter.

9 (2) If an insurance contract, premiums for which are
 10 advanced or to be advanced under the agreement, has not been
 11 issued at the time of execution and the premium finance
 12 agreement so provides, the name of the insurer, the policy
 13 number, and the due date of the first installment may be
 14 left blank and inserted thereafter.

15 Section 9. Financing an additional premium or policy
 16 -- required notice. (1) In connection with the financing of
 17 an additional premium or policy, upon the completion of the
 18 computations necessary to determine the amount of the
 19 revised unpaid balance and the number and amount of future
 20 installment payments, the company shall mail notice of the
 21 changes to the insured at his address shown in the
 22 agreement.

23 (2) The notice of the revised finance agreement shall
 24 set forth:

25 (a) the unpaid balance, as adjusted;

1 (b) the number and frequency of each installment under
2 the revised finance agreement;

3 (c) the amount of each installment;

4 (d) a statement to the insured that he may disaffirm
5 the revised finance agreement by mailing to the company's
6 office notice of his intention to do so, within 10 days of
7 the company's mailing of the notice of the revised finance
8 agreement; and

9 (e) a statement to the insured that the company may,
10 in the event he disaffirms, cancel his insurance contract or
11 contracts as provided in [section 10], except that the
12 required 10-day period shall be considered to commence with
13 the mailing of the notice of the revised finance agreement.

14 Section 10. Notice of rejection -- acceptance -- time
15 for disaffirmance. (1) Upon receipt of the loan form the
16 company shall promptly mail to the insured at the address
17 shown in the agreement or deliver to the insured personally
18 either a notice to the effect that the application for a
19 loan is rejected or a copy of the agreement, thereby
20 signifying acceptance by the company.

21 (2) If the agreement contained any blank space when it
22 was executed by or on behalf of the insured and such blank
23 was subsequently filled in, the company shall mail or
24 deliver a copy of the agreement as so filled in, as provided
25 in subsection (1). The insured shall have 10 days in which

1 to disaffirm his obligation under the premium finance
2 agreement by giving written notice thereof to the producer
3 and the company. In the event the agreement is not
4 disaffirmed by the insured, the agreement shall be as
5 binding an obligation of the insured as if the agreement
6 were complete on its face when it was executed.

7 Section 11. Permissive provisions -- cancellation. A
8 premium finance agreement may contain a power of attorney or
9 other authority enabling the company to cancel the insurance
10 contract or contracts listed in the agreement in event of
11 default in the terms thereof. Upon the exercise of such
12 right to cancel, the company shall mail to the insured, to
13 his last known address or to the address shown on the
14 premium finance agreement at least 10 days prior to
15 cancellation, a notice of its intent to cancel the insurance
16 contract or contracts. The liability of a company to any
17 person or corporation upon the exercise of such right or
18 authority of cancellation shall be limited to the amount of
19 the principal balance, except in the event of willful
20 failure by the company to mail the notice required by this
21 section.

22 Section 12. Observance of restrictions and regulations
23 governing cancellation. (1) All statutory, regulatory, and
24 contractual restrictions providing that the insured or the
25 insurer first satisfy such restrictions by giving a

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1 prescribed notice of cancellation to governmental agency,
 2 the insurer, the insured, the holder of a security interest
 3 in the subject of the insurance, or other prescribed party
 4 are not affected by the provisions of [this act]. However,
 5 any cancellation notice period required by such statutory,
 6 regulatory, or contractual restriction may not be cumulative
 7 to the period required by [sections 9 and 11].

8 (2) If cancellation of the insurance contract is
 9 initiated by the company under the terms of [this act], the
 10 insurer shall, in accordance with the requirement for a
 11 prescribed notice, on behalf of itself or the insured, give
 12 such notice to:

- 13 (a) the governmental agency;
- 14 (b) the holder of a security interest in the subject
 15 of the insurance; or
- 16 (c) any other prescribed party.

17 (3) The insurer shall determine and calculate the
 18 effective date of cancellation, in accordance with the terms
 19 of that prescribed notice, from the date it receives the
 20 notice of request for cancellation from the company. In no
 21 instance may the effective date of cancellation be prior to
 22 that established by the company.

23 Section 13. Return of unearned premiums or accrued
 24 dividends. The insurer within a reasonable time after the
 25 effective date of cancellation shall return whatever gross

1 unearned premiums or accrued dividends are payable under the
 2 insurance contract to the company that financed the
 3 insurance contract for the benefit of the insured. Whenever
 4 the return premium is in excess of the amount due to the
 5 company, the excess shall be remitted promptly to the
 6 insured or to his order.

7 Section 14. Affidavit of mailing. (1) At the time of
 8 mailing the notice required by [sections 9 and 11], the
 9 employee of the company who is doing the mailing shall
 10 prepare and sign an affidavit setting forth the following:

- 11 (a) the name and address of the employee doing the
 12 mailing;
- 13 (b) that the employee is 18 years of age or older;
- 14 (c) the date and place of deposit in the mail;
- 15 (d) the addressee's name and address as shown on the
 16 envelope mailed; and
- 17 (e) that the envelope was sealed and deposited in the
 18 mail with the postage thereon fully paid.

19 (2) An affidavit of mailing, prepared as prescribed in
 20 this section, creates a rebuttable presumption that the
 21 notice was mailed to the addressee stated in the affidavit.

22 Section 15. Limitation of finance charge. A duly
 23 licensed insurance agent, the insurer writing the coverage,
 24 or a premium finance agency may not impose, take, receive,
 25 reserve, or charge a finance charge that in the aggregate is

1 greater than that permitted by [this act].

2 Section 16. Aggregate finance charge. (1) A duly
3 licensed insurance agent, an insurer writing the coverage
4 being financed, or a premium finance agency may contract
5 for, charge, receive, and collect a finance charge that may
6 not exceed in the aggregate:

7 (a) 1 1/2% on the unpaid open account balance due a
8 duly licensed agent;

9 (b) 1 3/4% per month on that part of the unpaid
10 principal balance of a loan up to but not in excess of \$700
11 due an insurer writing the coverage being financed or a
12 premium finance agency; and

13 (c) 5/6 of 1% per month on any remainder of such
14 unpaid principal balance in excess of \$700.

15 Section 17. Minimum charge allowed -- maximum charges
16 for certain small installment payments. If the finance
17 charge computed under [section 16] is less than \$12, it may
18 be imposed, except that:

19 (1) when the principal balance is not in excess of
20 \$100 and is to be repaid in less than 4 months, the maximum
21 charge shall be \$4;

22 (2) when the principal balance is not in excess of
23 \$100 and is to be repaid in four monthly installments, the
24 maximum finance charge shall be \$6; and

25 (3) when the principal balance is not in excess of

1 \$100 and is to be repaid in five or more monthly
2 installments, the maximum finance charge shall be \$8.

3 Section 18. Date of computation of charge. The finance
4 charge shall be computed from the effective date of the
5 insurance coverage, provided that the company shall pay the
6 premium due the insurer either:

7 (a) within 30 days from the effective date of the
8 insurance coverage;

9 (b) within 30 days after the receipt by the company of
10 a proper premium finance agreement; or

11 (c) within 15 days after the company has mailed to the
12 insured notice of a revised finance agreement pursuant to
13 [section 9], whichever is later.

14 (2) If the conditions of (a), (b), or (c) of
15 subsection (1) are not met, the finance charge shall be
16 computed from the date the proceeds of the loan are
17 forwarded to the insurer. In the event the company receives
18 a proper premium finance agreement later than 60 days from
19 the effective date of the policy financed, a proportioned
20 adjustment of the finance charge shall be made after the
21 60-day period.

22 Section 19. Advance payments -- refunds. (1)
23 Notwithstanding the provisions of any premium finance
24 agreement to the contrary, any insured may pay the
25 obligation in full at any time before maturity of the final

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1 installment.

2 (2) If the insured pays the obligation in full before
3 maturity, he shall receive a refund credit thereon computed
4 in accordance with [section 28], except that:

5 (a) when the amount of the refund credit for
6 anticipation of payment is less than \$1, no refund need be
7 made; and

8 (b) when the earned finance charge amounts to less
9 than the minimum finance charge permitted by [section 17],
10 the company may retain as an earned finance charge a sum
11 equal to the minimum permitted by [section 17] or the
12 maximum prescribed by [section 17], whichever is applicable.

13 Section 20. Default charge. A premium finance
14 agreement may provide for the payment of a default charge of
15 \$1 to a maximum of 5% of the delinquent installment but not
16 to exceed \$5, in the event of a default for a period of not
17 less than 10 days in the payment of any scheduled
18 installment under the terms of a premium finance agreement.
19 This charge may not be collected more than once for the same
20 default and may be collected at the time of such default or
21 at any time thereafter. If the default charge is deducted
22 from any payment received after default occurs and such
23 deduction results in the default of a subsequent
24 installment, no charge may be made for the resulting
25 default.

1 Section 21. Payment on assigned agreement -- effect of
2 assignment on defenses. (1) Unless the insured has notice of
3 the assignment of a premium finance agreement, payment
4 thereunder by him to the last-known assignee of the
5 agreement shall be binding upon all subsequent assignees.

6 (2) Assignment of the premium finance agreement shall
7 not cut off any defenses which the insured would have
8 against the company of an assignee of the agreement arising
9 from obligations imposed by this division.

10 (3) The obligations and rights of a premium finance
11 agency under [this act] shall also apply to the assignee of
12 a premium finance agreement.

13 Section 22. Statements -- return of paid agreement. At
14 any time during the term of the premium finance agreement
15 but not later than 1 year after the last payment thereunder,
16 the company shall, upon written request of the insured, give
17 or mail to him a written statement of the date and amounts
18 of payment and the total amount, if any, unpaid thereunder.
19 This statement shall be supplied once each year without
20 charge. If an additional statement is requested, the company
21 shall supply such statement at a charge not exceeding \$1 for
22 each additional statement so supplied. Upon payment of a
23 loan in full, the company upon request shall return the
24 premium finance agreement marked "Paid" to the insured.

25 Section 23. Cancellation of policy -- refund credit.

1 In the event that the insurance policy or policies which are
 2 the subject of a premium finance agreement are canceled by
 3 the insured or by the insurer for any cause, the insured is
 4 entitled to receive a refund credit thereon. This refund
 5 credit shall be calculated in the manner prescribed in
 6 [section 28] and shall be paid to the insurer within a
 7 reasonable time.

8 Section 24. Validity as secured transaction. No filing
 9 of the premium finance agreement is necessary to perfect the
 10 validity of such agreement as a secured transaction as
 11 against creditors, subsequent purchasers, pledgees,
 12 encumbrancers, successors, or assigns of the insured.

13 Section 25. Downpayment -- trust -- transmittal. Any
 14 downpayment that is received by the company from the insured
 15 or from the insurance producer on behalf of the insured
 16 shall be held by the company in trust for and in transit to
 17 the insurer. This downpayment shall be paid to the insurer,
 18 together with the balance of the premium payable pursuant to
 19 the terms of the premium finance agreement within 30 days
 20 from the effective date of the policy, within 30 days after
 21 the receipt of a proper premium finance agreement by the
 22 company, or within 15 days after the company has mailed to
 23 the insured notice of a revised finance agreement pursuant
 24 to [section 9], whichever is later. If the premium is paid
 25 to the insurance agent or broker of record, such agent or

1 broker of record is not considered the agent of the company
 2 by reason of such payment.

3 Section 26. Manner of holding downpayments. (1) The
 4 downpayments received by the company under the provisions of
 5 [section 25], may be held by the company in trust in a
 6 separate bank account or depository, or in lieu thereof, the
 7 company may maintain a time deposit with a bank, savings and
 8 loan association, or comparable institution or obtain a
 9 certificate or certificates of deposit from a bank in an
 10 amount at least equal to the average amount of such
 11 downpayments being held at any given time by the company as
 12 ascertained by the commissioner of insurance, and which are
 13 payable to the insurer pursuant to the terms of the premium
 14 finance agreement.

15 (2) The deposits or certificates specified in
 16 subsection (1) shall be held in trust for the benefit of the
 17 insureds, as the relative interest in such downpayments may
 18 exist at any given time.

19 Section 27. Insolvency. In the event of the insolvency
 20 of a company, such funds on deposit under the provisions of
 21 this section or as represented by a certificate or
 22 certificates of deposit shall be first applied to remitting
 23 the amount of the downpayment to the insureds on all premium
 24 finance agreements upon which the company has not been
 25 forwarded in full the downpayments collected from and then

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1 being held for insureds, and, if insufficient to pay all
2 such amounts in full, then such funds shall be applied for
3 such purposes pro rata.

4 Section 28. Refund or credit of excess payments --
5 amount of refund credit. Whenever the interest or charges,
6 or interest and charges deducted in advance, exceed the
7 maximum provided by [this act], by reason of subsequent
8 repayment of the loan, a new loan, refinancing, or
9 otherwise, or any portion thereof prior to maturity or
10 prepayment of installments on the investment certificate
11 purchased with the loan, the excess shall be refunded to the
12 borrower or credited on any balance owing by the borrower to
13 the company. However, after the due date of the third
14 monthly installment, the amount of any such refund credit
15 may represent at least as great a proportion of the finance
16 charge as the sum of the periodic balances after the month
17 in which prepayment is made bears to the sum of all periodic
18 balances under the schedule of installments in the loan
19 agreement.

20 Section 29. Conflict of statutes. If any conflict
21 exists between the provisions of [this act] and the
22 provisions of any other law, the provisions of [this act]
23 control with regard to insurance premium financing.

24 Section 30. Severability. If a part of this act is
25 invalid, all valid parts that are severable from the invalid

1 part remain in effect. If a part of this act is invalid in
2 one or more of its applications, the part remains in effect
3 in all valid applications that are severable from the
4 invalid applications.

5 Section 31. Codification. Sections 1 through 28 are
6 intended to be an integral part of Title 33, and the
7 provisions of Title 33 apply to sections 1 through 28.

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