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STATE OF MICHIGAN
OFFICE OF FINANCIAL AND INSURANCE REGULATION
DEPARTMENT OF ENERGY, LABOR & ECONOMIC GROWTH
STANLEY "SKIP" PRUSS, DIRECTOR

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# BILL ANALYSIS

**BILL NUMBER:** House Bill 5494 (H-2)

**TOPIC:** Premium Finance Company Commission Payments

**SPONSOR:** Representative Schuitmaker

**CO-SPONSORS:** None

**COMMITTEE:** Committee on Insurance

**Analysis Done:** December 9, 2009

## POSITION

The Office of Financial and Insurance Regulation opposes this legislation.

## PROBLEM/BACKGROUND

The role of premium finance companies within the insurance industry is to enable insurance consumers to finance their premium. Premium financing is a third-party source of funding that does not impact usual lines of credit and allows insureds, typically business owners, to pay for premiums, sometimes for multiple policies, over the year rather than in one lump sum. Some businesses and individuals prefer to finance their insurance premiums because it frees up funds for other needs and leads to better cash management. Some of the time, insurers have premium financing available to its insureds through the insurance company; an alternative is to seek the services of a premium finance company. The insured agrees to have the premium finance company pay the annual premium and in return receive a payment plan from the company that includes premium and interest payments. If the insured fails to make the payment, the premium finance company has the right to request cancellation of the policy.

Premium finance companies are licensed and regulated under Chapter 15 of the Michigan Insurance Code. Under this chapter, premium finance companies are prohibited from remunerating insurance producers for placing insurance policies on installment plans with their company. Current statute only allows a producer to be paid a small service fee. Insurance carriers that provide premium financing are not subject to this restriction and are free to remunerate their producers for this service, thus gaining an unfair advantage over the premium finance companies in the marketplace. Premium finance companies want a level playing field and believe that this can be accomplished with the ability to pay producers for placing financing business with them.

## DESCRIPTION OF BILL

The proposed legislation adds subsection (4) to Section 1505 of the Premium Finance Company chapter (Chapter 15) in the Michigan Insurance Code. Under the new provision, premium finance companies will be permitted to remunerate insurance producers if the premium finance company is majority owned by those insurance producers that are placing the business for premium financing. However, premium finance companies involved in any way with stranger-originated life insurance (STOLI) may not remunerate producers, regardless of the premium finance company's corporate ownership.

## SUMMARY OF ARGUMENTS

### Pro

OFIR does not have any arguments to support this legislation.

### Con

House Bill 5494 (H-2) would allow producers to advance loans of premium to their insurance customers. There is no benefit to consumers in the changes proposed by the legislation. The insurance producer license grants them no authority to make loans of any type. This legislation would allow producers to collect commissions, transaction fees and interest on the same transaction. This legislation would permit a lending transaction to be added to a commission-based transaction.

The legislation to permit insurance producers to be remunerated for premium finance business placement is in conflict with sections in chapters 12 and 20 of the Insurance Code. Sections 1207 and 2066 limit the activities of producers. Producers have fiduciary responsibility and are prohibited from exchanging anything of value that is not specifically stated in the contract.

Section 2066 provides that no insurer, by itself or any other party, and no insurance agent or solicitor, personally or by any other party, transacting any kind of insurance business shall offer, promise, allow, give, set off or pay, directly or indirectly, any rebate of, or part of, the premium payable on the policy or on any policy, or agent's commission thereon, or earnings, profit, dividends or other benefit founded, arising, accruing or to accrue, or any other valuable consideration or inducement to or for insurance, on any risk in this state to be written, which is not specified in the contract of insurance.

Also, no insurer, agent or solicitor, personally or otherwise, may offer, promise, give, sell, or purchase any stocks, bonds, securities or any dividend or profits accruing, or other thing of value whatsoever as inducement to insurance or in connection with the insurance which is not specified in the policy contract. Section 1207 clearly states that an agent shall be a fiduciary for all money received or held by the agent in his or her capacity as an agent.

The issue of financing premiums for STOLI transactions must be addressed but it would be more effective if there were a general prohibition on remuneration for STOLI business financing. OFIR recommends that there be a prohibition of remuneration for STOLI financing transactions generally and that the prohibition not be limited by the type of entity that is bringing the business.

## FISCAL/ECONOMIC IMPACT

OFIS has identified the following revenue or budgetary implications in this bill:

(a) To the Office of Financial and Insurance Regulation: None

Budgetary:

Revenue:

Comments:

(b) To the Department of Energy, Labor & Economic Growth: None

Budgetary:

Revenue:

Comments:

(c) To the State of Michigan: None

Budgetary:

Revenue:

Comments:

(d) To Local Governments within this State: None

Comments:

## OTHER STATE DEPARTMENTS

None Known

## ANY OTHER PERTINENT INFORMATION

New York, Pennsylvania, Texas, New Jersey, and Nevada all specifically prohibit producers from collecting any compensation in these transactions other than the commission on sale of the insurance product. Nevada allows a $1.00 fee for presenting the premium financing agreement of another entity to the consumer. Pennsylvania allows a $10.00 fee. Most states allow $1.00, $2.00, or $3.00.

## ADMINISTRATIVE RULES IMPACT

The proposed legislation would amend the Michigan Insurance Code. OFIR has general rulemaking authority under the Insurance Code, 1956 PA 218.

Ken Ross
Commissioner

12-9-09
Date