

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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SENATE BILL 577

Short Title: Insurance Premium Financing.

(Public)

Sponsors: Senator Reeves.

Referred to: Commerce.

April 1, 1997

A BILL TO BE ENTITLED

AN ACT TO AMEND THE LAW GOVERNING INSURANCE PREMIUM FINANCING.

The General Assembly of North Carolina enacts:

Section 1. G.S. 58-35-30(a) reads as rewritten:

"(a) The licensee shall keep and use in his business ~~such~~any books, accounts, and records ~~as that~~ will enable the Commissioner to determine whether ~~such~~the licensee is complying with the provisions of this Article and with the rules and regulations lawfully made by the Commissioner hereunder. Every licensee shall preserve such books, accounts, and records, including cards used in a card system, if any, for at least three years after making the final entry in respect to any insurance premium finance agreement recorded therein; provided, however, the preservation of photographic reproductions thereof or records in ~~photographic~~photographic, imaging, microfilm, or microfiche form shall constitute compliance with this ~~requirement~~requirement by any licensee. The Commissioner may require of licensees under oath and in the form prescribed by him regular or special reports as he may deem necessary to the proper supervision of licensees under this Article."

Section 2. G.S. 58-35-50 reads as rewritten:

"§ 58-35-50. Form, contents and execution of insurance premium finance agreements.

1 (a) An insurance premium finance agreement shall be in writing, dated, signed by
2 the insured, and the printed portion thereof shall be ~~in at least eight point type~~ in type that
3 is legible, as determined by rule. It shall contain the entire agreement of the parties with
4 respect to the insurance contract, the premiums for which are advanced or to be advanced
5 under it, and:

6 (1) At its top, the words 'INSURANCE PREMIUM FINANCE
7 AGREEMENT' or similar wording in at least 10 point bold type; and
8 the insurance premium finance company license number shall also
9 appear, and:

10 (2) A notice in at least eight point bold type, reading as follows: 'NOTICE':
11 a. Do not sign this agreement before you read it.
12 b. You are entitled to a copy of this agreement.
13 c. Under the law, you have the right to pay off in advance the full
14 amount due and under certain conditions to obtain a partial
15 refund of the service charge.

16 (b) An insurance premium finance agreement shall:

17 (1) Contain the following:

18 a. The name and place of business of the insurance agent or broker
19 negotiating the related insurance ~~contract, contract~~;

20 b. The ~~the~~ name of the insured and either the ~~residence or~~ residence,
21 the place of ~~business~~ business, or any other mailing address of the
22 insured as specified by ~~him, the~~ insured;

23 c. The ~~the~~ name and place of business of the insurance premium
24 finance company to which installments or other payments are to
25 be ~~made, made~~;

26 d. A brief ~~a~~ description of the insurance ~~contract, contract~~;

27 e. The ~~the~~ premiums for which are advanced or to be advanced
28 under the ~~agreement, agreement~~; and

29 f. The ~~the~~ amount of the premiums for such insurance contract; and

30 (2) Set forth the following ~~items~~ items where applicable:

31 a. The total amount of the premiums;

32 b. The amount of the down payment;

33 c. The principal balance, which is the difference between items a
34 and b;

35 d. The amount of the service charge;

36 e. The balance, ~~which is the sum of items e and d,~~ payable by the
37 insured, meaning the sum of the amounts stated under items c.
38 and d. of this subdivision.

39 f. the number of installments required, the amount of each
40 installment expressed in dollars and the due date or period
41 thereof.

42 (c) The items set forth in subsection (d) of this section need not be stated in the
43 sequence or order ~~set forth above, inapplicable items may be omitted;~~ in which they appear

1 and additional items may be included to explain the computations made in determining
2 the amount to be paid by the insured.

3 (d) No insurance premium finance agreement shall be signed by an insured when it
4 contains any blank space to be filled in after it has been signed; however, if the insurance
5 contract, the premiums for which are advanced or to be advanced under the agreement,
6 has not been issued at the time of its signature by the insured and it so provides, the name
7 of the authorized insurer by whom such insurance contract is issued and the policy
8 number and the due date of the first installment may be left blank and later inserted in the
9 original of the agreement after it has been signed by the insured."

10 Section 3. G.S. 58-35-55(d) reads as rewritten:

11 "(d) The provisions of subsection (c) of this section apply if the premiums under
12 only one insurance contract are advanced or are to be advanced under an insurance
13 premium finance ~~agreement; agreement.~~ If if premiums under more than one insurance
14 contract are advanced or are to be advanced under an insurance premium finance
15 agreement, the service charge shall be computed from the earlier of (i) the date that the
16 premium is advanced in behalf of the insured, (ii) the inception date of such the insurance
17 contracts, or from (iii) the due date of such premiums; however, not more than the premiums.
18 Only one minimum service charge shall apply to each insurance premium finance
19 agreement."

20 Section 4. G.S. 58-35-65 reads as rewritten:

21 **"§ 58-35-65. Delivery of copy of insurance premium finance agreement to insured.**

22 Before the due date of the first installment payable under an insurance premium
23 finance agreement, the insurance premium finance company holding the agreement or the
24 insurance agent shall ~~deliver~~ cause to be delivered to the insured, or mail to ~~him~~ the
25 insured at his the insured's address as shown in the agreement, a copy of the agreement."

26 Section 5. G.S. 58-35-80(b) reads as rewritten:

27 "(b) The amount of any such refund credit shall represent at least as great
28 proportion of the service charge, if any, as the sum of the periodic balances after the
29 month in which prepayment is made bears to the sum of all periodic balances under the
30 schedule of installments in the agreement. Where the amount of the refund credit for
31 anticipation of payment is less than ~~one dollar (\$1.00), five dollars (\$5.00),~~ no refund need
32 be made."

33 Section 6. G.S. 58-35-85 reads as rewritten:

34 **"§ 58-35-85. Procedure for cancellation of insurance contract upon default; return
35 of unearned premiums; collection of cash surrender value.**

36 When an insurance premium finance agreement contains a power of attorney or other
37 authority enabling the insurance premium finance company to cancel any insurance
38 contract or contracts listed in the agreement, the insurance contract or contracts shall not
39 be cancelled unless the cancellation is effectuated in accordance with the following
40 provisions:

- 41 (1) Not less than 10 days' written notice ~~be mailed~~ is sent by personal
42 delivery, first-class mail, electronic mail, or facsimile transmission to
43 the last known address of the insured or insureds shown on the

1 insurance premium finance agreement of the intent of the insurance
2 premium finance company to cancel his or their insurance contract or
3 contracts unless the defaulted installment payment is received. ~~A notice~~
4 Notification thereof shall also be ~~sent~~ provided to the insurance agent.

5 (2) After expiration of the 10 day period, the insurance premium finance
6 company shall send the insurer a request for cancellation specifying the
7 effective date of cancellation and shall mail a copy of the request for
8 cancellation to the insured at his last known address as shown on the
9 insurance premium finance ~~agreement.~~ agreement and to the agent.
10 Upon request of the insurance company, ~~The~~ the premium finance
11 company shall ~~include~~ furnish a copy of the power of attorney ~~with the~~
12 ~~request for cancellation if the insurer has not already received a copy of the~~
13 ~~power of attorney with the application.~~ attorney to the insurance company.

14 (3) Upon receipt of a copy of the request for cancellation notice by the
15 insurer, the insurance contract shall be cancelled as of the date specified
16 in the cancellation notice with the same force and effect as if the
17 ~~aforsaid~~ request for cancellation had been submitted by the ~~insured~~
18 himself, insured, without requiring the return of the insurance contract or
19 contracts.

20 (4) All statutory, regulatory, and contractual restrictions providing that the
21 insured may not cancel ~~his~~ the insurance contract unless ~~he~~ the insured
22 first satisfies the restrictions by giving a prescribed notice to a
23 governmental agency, the insurance carrier, an individual, or a person
24 designated to receive the notice for said governmental agency, insurance
25 carrier, or individual shall apply where cancellation is effected under the
26 provisions of this section.

27 (4a) If an insurer receives notification from an insurance agent or premium
28 finance company that the initial down payment for the premium being
29 financed has been dishonored by a financial institution or otherwise
30 unpaid, there is not a valid contract for insurance and the policy will be
31 voided.

32 (5) Whenever an insurance contract is cancelled in accordance with this
33 section, the insurer shall promptly return whatever gross unearned
34 premiums are due under the ~~contract~~ contract, computed pro rata, to the
35 insurance premium finance company effecting the cancellation for the
36 benefit of the insured or ~~insureds.~~ insureds, no later than 30 days after
37 the effective date of cancellation. Whenever the return premium is in
38 excess of the amount due the insurance premium finance company by
39 the insured under the agreement, the excess shall be remitted promptly
40 to the order of the insured, subject to the minimum service charge
41 provided for in this Article. In the event that a premium is subject to an
42 audit to determine the final premium amount, the gross unearned
43 premium shall be calculated upon the deposit premium and the insurer

1 shall return the gross unearned premium, computed on a pro rata basis,
2 to the premium finance company no later than 30 days after the
3 effective date of cancellation.

4 (6) The provisions of this section relating to request for cancellation by the
5 insurance premium finance company of an insurance contract and the
6 return by an insurer of unearned premiums to the insurance premium
7 finance company, also apply to the surrender by the insurance premium
8 finance company of an insurance contract providing life insurance and
9 the payment by the insurer of the cash value of the contract to the
10 insurance premium finance company, except that the insurer may
11 require the surrender of the insurance contract.

12 (7) The insurer shall not deduct from any return premiums any amount
13 owed to the insurer for any other indebtedness owed to the insurer by
14 the insured.

15 (8) In the event that the crediting of return premiums to the account of the
16 insured results in a surplus over the amount due from the insured, the
17 premium finance company shall refund the excess to the insured as soon
18 as possible, but in no event later than 30 days of receipt of the return
19 premium, provided that no refund shall be required if it is in an amount
20 less than five dollars (\$5.00).

21 (9) In the event that a balance due the premium finance company remains
22 on the account after the cancellation of the agreement, the outstanding
23 balance may earn interest at the rate stated in the agreement until paid in
24 full."

25 Section 7. G.S. 58-35-40 reads as rewritten:

26 "**§ 58-35-40. Rebates and inducements prohibited; assignment of insurance**
27 **premium finance agreements.**

28 (a) ~~No insurance premium finance company, and no employee of such a company~~
29 ~~shall pay, allow, or offer to pay or allow in any manner whatsoever to an insurance agent or~~
30 ~~any employee of an insurance agent, or to any other person, or as an inducement to the~~
31 ~~financing of an insurance policy with the insurance premium finance company or after any such~~
32 ~~policy has been financed, and no insurance agent or other person shall accept from a~~
33 ~~company, any rebate whatsoever, either from the service charge for financing specified in~~
34 ~~the insurance premium finance agreement or otherwise, or otherwise. No insurance~~
35 ~~premium finance company shall pay, allow, or offer to pay or allow to an insurance~~
36 ~~agent, and no insurance agent shall accept from a company, a rebate as an inducement to~~
37 ~~the financing of an insurance policy with the company. No insurance premium finance~~
38 ~~company shall give or offer to give to an insurance agent, and no insurance agent shall~~
39 ~~accept from a company, any valuable consideration or inducement of any kind-kind,~~
40 ~~directly or indirectly, other than an article of merchandise not exceeding one dollar~~
41 ~~(\$1.00) in value which shall have thereon the advertisement of the insurance premium~~
42 ~~finance company; but an company. An insurance premium finance company may~~
43 ~~purchase or otherwise acquire an insurance premium finance agreement provided that it~~

1 ~~conforms to this Article in all respects,~~ from another insurance premium finance company
2 with recourse against the insurance premium finance company on such terms and
3 conditions as may be mutually agreed upon by the parties, if the agreement complies with
4 the requirements of this Article. and such terms Terms and conditions of any agreement
5 shall be subject to the approval of the Commissioner.

6 (b) No filing of the assignment or notice thereof to the insured shall be necessary
7 to the validity of the written assignment of an insurance premium finance agreement as
8 against creditors or subsequent purchases, pledges, or encumbrancers of the assignor.

9 (c) As used in this section, the term 'insurance premium finance company' includes
10 employees of the company and the term 'insurance agent' includes employees of the
11 insurance agent. The word 'company' means an insurance premium finance company."

12 Section 8. This act becomes effective October 1, 1997, and applies to premium
13 finance agreements or contracts entered into on or after that date.