

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

H

1

HOUSE BILL 1093\*

Short Title: Insurance Premium Financing.

(Public)

Sponsors: Representatives Dockham; and Hurley.

Referred to: Insurance.

April 15, 1999

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~~ type that is  
3 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~~ and the following:

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 ~~**INSURANCE PREMIUM FINANCE AGREEMENT**~~

12 **NOTICE**

- 13 a. Do not sign this agreement before you read it.  
14 b. You are entitled to a copy of this agreement.  
15 c. Under the law, you have the right to pay off in advance the full  
16 amount due and under certain conditions to obtain a partial  
17 refund of the service charge.'

18 (b) An insurance premium finance agreement shall:

19 (1) Contain the following:

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

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

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

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

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

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

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

33 a. The total amount of the premiums;

34 b. The amount of the down payment;

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

37 d. The amount of the service charge;

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

41 f. ~~the~~ The number of installments required, the amount of each  
42 installment expressed in dollars and the due date or period  
43 thereof.

1 (c) The items set forth in subsection (b) of this section need not be stated in the  
2 sequence or order ~~set forth above, inapplicable items may be omitted; in which they appear in~~  
3 that subsection, and additional items may be included to explain the computations made  
4 in determining the amount to be paid by the insured.

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

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

13 "(d) The provisions of subsection (c) of this section pertaining to the time from  
14 which the service charge is calculated apply if the premiums under only one insurance  
15 contract are advanced or are to be advanced under an insurance premium finance  
16 ~~agreement; agreement.~~ If if premiums under more than one insurance contract are  
17 advanced or are to be advanced under an insurance premium finance agreement, the  
18 service charge shall be computed from the earlier of the following:

19 (1) The date that the premium is advanced on behalf of the insured.

20 (2) The inception date of such any insurance contracts, or from contract  
21 financed on the premium finance agreement.

22 ~~due date of such premiums; however, not more than~~

23 Only one minimum service charge shall apply to each insurance premium finance  
24 agreement."

25 Section 3.1. G.S. 58-35-55 is amended by adding a new subsection to read:

26 "(g) A premium finance company, insurance company, or insurance agent or  
27 agency that commits a de minimis technical violation of this section is not liable to a third  
28 party absent a showing of (i) willful misconduct or (ii) material damages proximately  
29 caused by the violation."

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

31 "**§ 58-35-65. Delivery of copy of insurance premium finance agreement to insured.**

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

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

37 "(b) The amount of any such refund credit shall represent at least as great  
38 proportion of the service charge, if any, as the sum of the periodic balances after the  
39 month in which prepayment is made bears to the sum of all periodic balances under the  
40 schedule of installments in the agreement. Where the amount of the refund credit for  
41 anticipation of payment is less than ~~one dollar (\$1.00), five dollars (\$5.00),~~ no refund need  
42 be made. This section does not relieve the premium finance company of its duty to report

1 and deliver these unrefunded monies to the State Treasurer in accordance with G.S.  
2 116B-29(b)."

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

4 **"§ 58-35-85. Procedure for cancellation of insurance contract upon default; return**  
5 **of unearned premiums; collection of cash surrender value.**

6 When an insurance premium finance agreement contains a power of attorney or other  
7 authority enabling the insurance premium finance company to cancel any insurance  
8 contract or contracts listed in the agreement, the insurance contract or contracts shall not  
9 be cancelled unless the cancellation is effectuated in accordance with the following  
10 provisions:

11 (1) Not less than 10 days' written notice ~~be mailed~~ is sent by personal  
12 delivery, first-class mail, electronic mail, or facsimile transmission to  
13 the last known address of the insured or insureds shown on the  
14 insurance premium finance agreement of the intent of the insurance  
15 premium finance company to cancel his or their insurance contract or  
16 contracts unless the defaulted installment payment is received. ~~A notice~~  
17 Notification thereof shall also be ~~sent~~ provided to the insurance agent.

18 (2) After expiration of the 10-day period, the insurance premium finance  
19 company shall send the insurer a request for cancellation and shall ~~mail~~  
20 send a copy of the request for notice of the requested cancellation to the  
21 insured by personal delivery, first-class mail, electronic mail, electronic  
22 transmission or facsimile transmission at his last known address as  
23 shown on the records of the insurance premium finance agreement  
24 company and to the agent. Upon written request of the insurance  
25 company, The the premium finance company shall include furnish a  
26 copy of the power of attorney with the request for cancellation if the insurer  
27 has not already received a copy of the power of attorney with the application.  
28 attorney to the insurance company. The written request shall be sent by  
29 mail, personal delivery, electronic mail, or facsimile transmission.

30 (3) Upon receipt of a copy of the request for cancellation notice by the  
31 insurer, the insurance contract shall be cancelled with the same force  
32 and effect as if the ~~aforsaid~~ request for cancellation had been submitted  
33 by the ~~insured himself, insured,~~ without requiring the return of the  
34 insurance contract or contracts.

35 (4) All statutory, regulatory, and contractual restrictions providing that the  
36 insured may not cancel ~~his the~~ insurance contract unless ~~he the~~ insurer  
37 first satisfies the restrictions by giving a prescribed notice to a  
38 governmental agency, the insurance carrier, an individual, or a person  
39 designated to receive the notice for said governmental agency, insurance  
40 carrier, or individual shall apply where cancellation is effected under the  
41 provisions of this section. If a mortgagee or other loss payee is shown  
42 on the insurance contract, the insurer shall notify the mortgagee or loss  
43 payee in accordance with G.S. 58-41-15(b).

- 1           (4a) If an insurer receives notification from an insurance agent or premium  
2 finance company that the initial down payment for the premium being  
3 financed has been dishonored by a financial institution or otherwise  
4 unpaid, there is no valid contract for insurance and the policy will be  
5 voided.
- 6           (5) Whenever an insurance contract is cancelled in accordance with this  
7 section, the insurer shall promptly return whatever gross unearned  
8 premiums are due under the ~~contract~~ contract, computed pro rata, to the  
9 insurance premium finance company effecting the cancellation for the  
10 benefit of the insured or ~~insureds~~ insureds, no later than 30 days after  
11 the effective date of cancellation. Whenever the return premium is in  
12 excess of the amount due the insurance premium finance company by  
13 the insured under the agreement, the excess shall be remitted promptly  
14 to the order of the ~~insured~~ insured, as provided in subdivision (8) of this  
15 section, subject to the minimum service charge provided for in this  
16 Article. In the event that a premium is subject to an audit to determine  
17 the final premium amount, the gross unearned premium shall be  
18 calculated upon the deposit premium and the insurer shall return the  
19 gross unearned premium, calculated on a pro rata basis, to the premium  
20 finance company no later than 30 days after the effective date of  
21 cancellation.
- 22           (6) The provisions of this section relating to request for cancellation by the  
23 insurance premium finance company of an insurance contract and the  
24 return by an insurer of unearned premiums to the insurance premium  
25 finance company, also apply to the surrender by the insurance premium  
26 finance company of an insurance contract providing life insurance and  
27 the payment by the insurer of the cash value of the contract to the  
28 insurance premium finance company, except that the insurer may  
29 require the surrender of the insurance contract.
- 30           (7) The insurer shall not deduct from any return premiums any amount  
31 owed to the insurer for any other indebtedness owed to the insurer by  
32 the insured on any policy or policies other than those being financed  
33 under the premium finance agreement.
- 34           (8) In the event that the crediting of return premiums to the account of the  
35 insured results in a surplus over the amount due from the insured, the  
36 premium finance company shall refund the excess to the insured as soon  
37 as possible, but in no event later than 30 days of receipt of the return  
38 premium, provided that no refund shall be required if it is in an amount  
39 less than five dollars (\$5.00). This subdivision does not relieve the  
40 premium finance company of its duty to report and deliver these  
41 unrefunded monies to the State Treasurer in accordance with G.S.  
42 116B-29(b).

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

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

6 **"§ 58-35-40. Rebates and inducements prohibited; assignment of insurance**  
7 **premium finance agreements.**

8           (a) ~~No insurance premium finance company, and no employee of such a company~~  
9 ~~shall pay, allow, or offer to pay or allow in any manner whatsoever to an insurance agent~~  
10 ~~or any employee of an insurance agent, or to any other person, or as an inducement to the~~  
11 ~~financing of an insurance policy with the insurance premium finance company or after~~  
12 ~~any such policy has been financed, any rebate whatsoever, either from the service charge~~  
13 ~~for financing specified in the insurance premium finance agreement or otherwise, or~~ No  
14 insurance premium finance company shall pay, allow, or offer to pay or allow payment to  
15 an insurance agent, and no insurance agent shall accept from a company, a rebate as an  
16 inducement to the financing of an insurance policy with the company. No insurance  
17 premium finance company shall give or offer to give to an insurance agent, and no  
18 insurance agent shall accept from a company, any valuable consideration or inducement  
19 of any kind-kind, directly or indirectly, other than an article of merchandise not exceeding  
20 one dollar (\$1.00) in value which shall have thereon the advertisement of the insurance  
21 premium finance company; but an company. An insurance premium finance company  
22 may purchase or otherwise acquire an insurance premium finance agreement provided  
23 that it conforms to this Article in all respects, from another insurance premium finance  
24 company with recourse against the insurance premium finance company on such terms  
25 and conditions as may be mutually agreed upon by the parties, if the agreement complies  
26 with the requirements of this Article. and such terms ~~The terms and conditions of the~~  
27 ~~agreement shall be subject to the approval of the Commissioner.~~

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

31           (c) As used in this section, the term 'insurance premium finance company'  
32 includes employees of the company; the term 'insurance agent' includes employees of the  
33 insurance agent; and the word 'company' means an insurance premium finance  
34 company."

35           Section 8. This act becomes effective October 1, 1999, and applies to premium  
36 finance agreements or contracts entered into on or after that date.