

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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SENATE BILL 643

Insurance Committee Substitute Adopted 4/28/99

House Committee Substitute Favorable 5/24/99

Short Title: Insurance Premium Financing.

(Public)

Sponsors:

Referred to:

March 30, 1999

1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND THE LAW GOVERNING INSURANCE PREMIUM
3 FINANCING.

4 The General Assembly of North Carolina enacts:

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

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

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

1 "§ 58-35-50. Form, contents and execution of insurance premium finance
2 agreements.

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

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

12 (2) ~~A notice in at least eight point bold type, reading as follows: 'NOTICE':~~
13 'INSURANCE PREMIUM FINANCE AGREEMENT

14 NOTICE

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

20 (b) An insurance premium finance agreement shall:

21 (1) Contain the following:

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

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

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

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

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

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

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

35 a. The total amount of the premiums;

36 b. The amount of the down payment;

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

39 d. The amount of the service charge;

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

1 f. ~~the~~ The number of installments required, the amount of each
2 installment expressed in dollars and the due date or period
3 thereof.

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

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

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

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

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

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

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

26 Only one minimum service charge shall apply to each insurance premium finance
27 agreement."

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

29 "**§ 58-35-65. Delivery of copy of insurance premium finance agreement to insured.**

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

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

35 "(b) The amount of any such refund credit shall represent at least as great
36 proportion of the service charge, if any, as the sum of the periodic balances after the
37 month in which prepayment is made bears to the sum of all periodic balances under the
38 schedule of installments in the agreement. Where the amount of the refund credit for
39 anticipation of payment is less than one dollar (\$1.00), no refund need be made. This
40 section does not relieve the premium finance company of its duty to report and deliver
41 these unrefunded monies to the State Treasurer in accordance with G.S. 116B-29(b)."

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

1 **"§ 58-35-85. Procedure for cancellation of insurance contract upon default; return**
2 **of unearned premiums; collection of cash surrender value.**

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

- 8 (1) Not less than 10 days' written notice ~~be mailed~~ is sent by personal
9 delivery, first-class mail, electronic mail, or facsimile transmission to
10 the last known address of the insured or insureds shown on the
11 insurance premium finance agreement of the intent of the insurance
12 premium finance company to cancel his or their insurance contract or
13 contracts unless the defaulted installment payment is received. ~~A notice~~
14 Notification thereof shall also be ~~sent~~ provided to the insurance agent.
- 15 (2) After expiration of the 10-day period, the insurance premium finance
16 company shall send the insurer a request for cancellation and shall ~~mail~~
17 send a copy of the request for notice of the requested cancellation to the
18 insured by personal delivery, first-class mail, electronic mail, electronic
19 transmission, or facsimile transmission at his last known address as
20 shown on the records of the insurance premium finance agreement
21 company and to the agent. Upon written request of the insurance
22 company, ~~The~~ ~~the~~ premium finance company shall ~~include~~ furnish a
23 copy of the power of attorney with the request for cancellation if the insurer
24 has not already received a copy of the power of attorney with the application
25 attorney to the insurance company. The written request shall be sent by
26 mail, personal delivery, electronic mail, or facsimile transmission.
- 27 (3) Upon receipt of a copy of the request for cancellation notice by the
28 insurer, the insurance contract shall be cancelled with the same force
29 and effect as if the ~~aforsaid~~ request for cancellation had been submitted
30 by the ~~insured himself, insured,~~ insured, without requiring the return of the
31 insurance contract or contracts.
- 32 (4) All statutory, regulatory, and contractual restrictions providing that the
33 insured may not cancel ~~his~~ the insurance contract unless ~~he~~ the insurer
34 first satisfies the restrictions by giving a prescribed notice to a
35 governmental agency, the insurance carrier, an individual, or a person
36 designated to receive the notice for said governmental agency, insurance
37 carrier, or individual shall apply where cancellation is effected under the
38 provisions of this section.
- 39 (4a) If an insurer receives notification from an insurance agent or premium
40 finance company that the initial down payment for the premium being
41 financed has been dishonored by a financial institution, or otherwise
42 unpaid, there is no valid contract for insurance and the policy will be
43 voided.

- 1 (5) Whenever an insurance contract is cancelled in accordance with this
2 section, the insurer shall promptly return whatever gross unearned
3 premiums are due under the contract to the insurance premium finance
4 company effecting the cancellation for the benefit of the insured or
5 ~~insureds.~~insureds, no later than 30 days after the effective date of
6 cancellation. Whenever the return premium is in excess of the amount
7 due the insurance premium finance company by the insured under the
8 agreement, the excess shall be remitted promptly to the order of the
9 ~~insured,~~insured, as provided in subdivision (8) of this section, subject to
10 the minimum service charge provided for in this Article. In the event
11 that a premium is subject to an audit to determine the final premium
12 amount, the amount to be refunded to the premium finance company
13 shall be calculated upon the deposit premium and the insurer shall return
14 that amount to the premium finance company no later than 30 days after
15 the effective date of cancellation. This provision shall not limit any
16 other remedies the insurer may have against the insured for additional
17 premiums.
- 18 (6) The provisions of this section relating to request for cancellation by the
19 insurance premium finance company of an insurance contract and the
20 return by an insurer of unearned premiums to the insurance premium
21 finance company, also apply to the surrender by the insurance premium
22 finance company of an insurance contract providing life insurance and
23 the payment by the insurer of the cash value of the contract to the
24 insurance premium finance company, except that the insurer may
25 require the surrender of the insurance contract.
- 26 (7) The insurer shall not deduct from any return premiums any amount
27 owed to the insurer for any other indebtedness owed to the insurer by
28 the insured on any policy or policies other than those being financed
29 under the premium finance agreement.
- 30 (8) In the event that the crediting of return premiums to the account of the
31 insured results in a surplus over the amount due from the insured, the
32 premium finance company shall refund the excess to the insured as soon
33 as possible, but in no event later than 30 days of receipt of the return
34 premium, provided that no refund shall be required if it is in an amount
35 less than one dollar (\$1.00). This subdivision does not relieve the
36 premium finance company of its duty to report and deliver these
37 unrefunded monies to the State Treasurer in accordance with G.S.
38 116B-29(b).
- 39 (9) In the event that a balance due the premium finance company remains
40 on the account after the cancellation of the agreement, the outstanding
41 balance may earn interest at the rate stated in the agreement until paid in
42 full.

1 (10) If a mortgagee or other loss payee is shown on the insurance contract,
2 the insurer shall notify the mortgagee or loss payee of the cancellation.
3 The written notice shall be sent by mail, personal delivery, electronic
4 mail, or facsimile transmission to the designated mortgagee's or loss
5 payee's last known address. Proof of mailing is sufficient proof of
6 notice. Failure to send this notice to any designated mortgagee or loss
7 payee shall not give rise to any claim on the part of the insured."

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

9 **"§ 58-35-40. Rebates and inducements prohibited; assignment of insurance**
10 **premium finance agreements.**

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

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

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

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