

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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SENATE BILL 577

Commerce Committee Substitute Adopted 4/30/97

Short Title: Insurance Premium Financing.

(Public)

Sponsors:

Referred to:

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:

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. It shall  
5 contain the entire agreement of the parties with respect to the insurance contract, the  
6 premiums for which are advanced or to be advanced under it, and:

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

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

17 (b) An insurance premium finance agreement shall:

18 (1) Contain the following:

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

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

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

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

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

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

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

32 a. The total amount of the premiums;

33 b. The amount of the down payment;

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

36 d. The amount of the service charge;

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

40 f. the number of installments required, the amount of each  
41 installment expressed in dollars and the due date or period  
42 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 apply if the premiums under  
14 only one insurance contract are advanced or are to be advanced under an insurance  
15 premium finance ~~agreement; agreement.~~ If if premiums under more than one insurance  
16 contract are advanced or are to be advanced under an insurance premium finance  
17 agreement, the service charge shall be computed from the earlier of the following:

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

19 (2) The inception date of such the insurance contracts, or from contract.  
20 ~~due date of such premiums; however, not more than~~

21 Only one minimum service charge shall apply to each insurance premium finance  
22 agreement."

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

24 "**§ 58-35-65. Delivery of copy of insurance premium finance agreement to insured.**

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

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

30 "(b) The amount of any such refund credit shall represent at least as great  
31 proportion of the service charge, if any, as the sum of the periodic balances after the  
32 month in which prepayment is made bears to the sum of all periodic balances under the  
33 schedule of installments in the agreement. Where the amount of the refund credit for  
34 anticipation of payment is less than ~~one dollar (\$1.00); five dollars (\$5.00),~~ no refund need  
35 be made. This section does not relieve the premium finance company of its duty to report  
36 and deliver these unrefunded monies to the State Treasurer in accordance with G.S.  
37 116B-29(b)."

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

39 "**§ 58-35-85. Procedure for cancellation of insurance contract upon default; return**  
40 **of unearned premiums; collection of cash surrender value.**

41 When an insurance premium finance agreement contains a power of attorney or other  
42 authority enabling the insurance premium finance company to cancel any insurance  
43 contract or contracts listed in the agreement, the insurance contract or contracts shall not

1 be cancelled unless the cancellation is effectuated in accordance with the following  
2 provisions:

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

10 (2) After expiration of the 10-day period, the insurance premium finance  
11 company shall send the insurer a request for cancellation specifying the  
12 effective date of cancellation and shall ~~mail~~ send a copy of the request for  
13 notice of the cancellation to the insured by personal delivery, first-class  
14 mail, electronic mail, electronic transmission or facsimile transmission  
15 at his last known address as shown on the records of the insurance  
16 premium finance agreement. ~~company and to the agent.~~ Upon written  
17 request of the insurance company, ~~The~~ the premium finance company  
18 shall include ~~furnish~~ a copy of the power of attorney with the request for  
19 cancellation if the insurer has not already received a copy of the power of  
20 attorney with the application. ~~attorney to the insurance company.~~ The  
21 written request shall be sent by mail, personal delivery, electronic mail,  
22 or facsimile transmission. The insurer's failure to comply with this  
23 request does not invalidate the cancellation.

24 (3) Upon receipt of a copy of the request for cancellation notice by the  
25 insurer, the insurance contract shall be cancelled as of the date specified  
26 in the cancellation notice with the same force and effect as if the  
27 ~~aforsaid~~ request for cancellation had been submitted by the insured  
28 himself, insured, without requiring the return of the insurance contract or  
29 contracts.

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

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 is otherwise  
42 unpaid, there is not a 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, subject to the minimum service charge provided for in this  
10 Article. In the event that a premium is subject to an audit to determine  
11 the final premium amount, the gross unearned premium shall be  
12 calculated upon the deposit premium and the insurer shall return the  
13 gross unearned premium to the premium finance company no later than  
14 30 days after the effective date of cancellation.
- 15 (6) The provisions of this section relating to request for cancellation by the  
16 insurance premium finance company of an insurance contract and the  
17 return by an insurer of unearned premiums to the insurance premium  
18 finance company, also apply to the surrender by the insurance premium  
19 finance company of an insurance contract providing life insurance and  
20 the payment by the insurer of the cash value of the contract to the  
21 insurance premium finance company, except that the insurer may  
22 require the surrender of the insurance contract.
- 23 (7) The insurer shall not deduct from any return premiums any amount  
24 owed to the insurer for any other indebtedness owed to the insurer by  
25 the insured on any policy or policies other than those being financed  
26 under the premium finance agreement.
- 27 (8) In the event that the crediting of return premiums to the account of the  
28 insured results in a surplus over the amount due from the insured, the  
29 premium finance company shall refund the excess to the insured as soon  
30 as possible, but in no event later than 30 days of receipt of the return  
31 premium, provided that no refund shall be required if it is in an amount  
32 less than five dollars (\$5.00). This subdivision does not relieve the  
33 premium finance company of its duty to report and deliver these  
34 unrefunded monies to the State Treasurer in accordance with G.S.  
35 116B-29(b).
- 36 (9) In the event that a balance due the premium finance company remains  
37 on the account after the cancellation of the agreement, the outstanding  
38 balance may earn interest at the rate stated in the agreement until paid in  
39 full."

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

41 "§ 58-35-40. **Rebates and inducements prohibited; assignment of insurance**  
42 **premium finance agreements.**

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

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

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

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