

NORTH CAROLINA RATE BUREAU

POST OFFICE BOX 176010
RALEIGH, NORTH CAROLINA 27619-6010

JOHN W. WATKINS
General Manager

5401 SIX FORKS ROAD
RALEIGH, NORTH CAROLINA 27609-4435

TELEPHONE (919) 783-9790
FACSIMILE (919) 783-7467

JERRY G. HAMRICK
Workers Compensation Manager

F. TIMOTHY LUCAS
Personal Lines Manager

DAVID E. SINK, JR.
Accounting Manager

March 10, 2000

CIRCULAR LETTER TO ALL MEMBER COMPANIES

**Re: Senate Bill 643
Insurance Premium Financing**

Senate Bill 643, which made several changes to the statutes regulating insurance premium finance companies and insurance premium financing agreements, was ratified on June 2, 1999 by the General Assembly of North Carolina and became effective on October 1, 1999, applicable to premium finance agreements or contracts entered into on or after that date.

A copy of Senate Bill 643 and a summary of the Bill are attached. Specific attention should be given to Section 6.

Please see that appropriate company personnel are made aware of the changes which resulted from the ratification of Senate Bill 643.

Very truly yours,

Jerry G. Hamrick

Workers Compensation Manager

JGH:dg

Enclosures

C-00-8

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

SENATE BILL 643

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.

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

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

(2) A notice in at least eight point bold type, reading as follows:

~~'NOTICE':~~ INSURANCE PREMIUM FINANCE AGREEMENT NOTICE

a. Do not sign this agreement before you read it.

b. You are entitled to a copy of this agreement.

c. Under the law, you have the right to pay off in advance the full amount due and under certain conditions to obtain a partial refund of the service charge.'

(b) An insurance premium finance agreement shall:

(1) Contain the following:

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

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

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

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

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

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

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

- a. The total amount of the premiums;

- b. The amount of the down payment;

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

- d. The amount of the service charge;

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

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

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

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

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

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

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

(2) The inception date of such any insurance contracts, or from contract financed on the premium finance agreement. due date of such premiums; however, not more than Only one minimum service charge shall apply to each insurance premium finance agreement.

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

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

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

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

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

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

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

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

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

(2) After expiration of the 10-day period, the insurance premium finance company shall send the insurer a request for cancellation and shall ~~mail~~ send a copy of the request for notice of the requested cancellation to the insured by personal delivery, first-class

mail, electronic mail, electronic transmission, or facsimile transmission at his last known address as shown on the records of the insurance premium finance agreement. company and to the agent. Upon written request of the insurance company, The the premium finance company shall include furnish a copy of the power of attorney with the request for cancellation if the insurer has not already received a copy of the power of attorney with the application. attorney to the insurance company. The written request shall be sent by mail, personal delivery, electronic mail, or facsimile transmission.

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

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

(4a) If an insurer receives notification from an insurance agent or premium finance company that the initial down payment for the premium being financed has been dishonored by a financial institution, or otherwise unpaid, there is no valid contract for insurance and the policy will be voided.

(5) Whenever an insurance contract is cancelled in accordance with this section, the insurer shall promptly return whatever gross unearned premiums are due under the contract to the insurance premium finance company effecting the cancellation for the benefit of the insured or ~~insureds~~, insureds, no later than 30 days after the effective date of cancellation. Whenever the return premium is in excess of the amount due the insurance premium finance company by the insured under the agreement, the excess shall be remitted promptly to the order of the ~~insured~~, insured, as provided in subdivision (8) of this section, subject to the minimum service charge provided for in this Article. In the event that a premium is subject to an audit to determine the final premium amount, the amount to be refunded to the premium finance company shall be calculated upon the deposit premium and the insurer shall return that amount to the premium finance company no later than 30 days after the effective date of cancellation. This provision shall not limit any other remedies the insurer may have against the insured for additional premiums.

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

(7) The insurer shall not deduct from any return premiums any amount owed to the insurer for any other indebtedness owed to the insurer by the insured on any policy or policies other than those being financed under the premium finance agreement.

(8) In the event that the crediting of return premiums to the account of the insured results in a surplus over the amount due from the insured, the premium finance company shall refund the excess to the insured as soon as possible, but in no event later than 30 days

of receipt of the return premium, provided that no refund shall be required if it is in an amount less than one dollar (\$1.00). This subdivision does not relieve the premium finance company of its duty to report and deliver these unrefunded monies to the State Treasurer in accordance with G.S. 116B-29(b).

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

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

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

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

(a) No insurance premium finance company, and no employee of such a company shall pay, allow, or offer to pay or allow in any manner whatsoever to an insurance agent or any employee of an insurance agent, or to any other person, or as an inducement to the financing of an insurance policy with the insurance premium finance company or after any such policy has been financed, any rebate whatsoever, either from the service charge for financing specified in the insurance premium finance agreement or otherwise, or No insurance premium finance company shall pay, allow, or offer to pay or allow payment to an insurance agent, and no insurance agent shall

accept from a company, a rebate as an inducement to the financing of an insurance policy with the company. No insurance premium finance company shall give or offer to give to an insurance agent, and no insurance agent shall accept from a company, any valuable consideration or inducement of any kind kind, directly or indirectly, other than an article of merchandise not exceeding one dollar (\$1.00) in value which shall have thereon the advertisement of the insurance premium finance company; but an company. An insurance premium finance company may purchase or otherwise acquire an insurance premium finance agreement provided that it conforms to this Article in all respects, from another insurance premium finance company with recourse against the insurance premium finance company on such terms and conditions as may be mutually agreed upon by the parties, if the agreement complies with the requirements of this Article. and such terms The terms and conditions of the agreement shall be subject to the approval of the Commissioner.

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

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

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

In the General Assembly read three times and ratified this the 2nd day of June, 1999.

s/ Dennis A. Wicker

President of the Senate

s/ James B. Black

Speaker of the House of Representatives

s/ James B. Hunt, Jr.

Governor

Approved 5:20 p.m. this 8th day of June, 1999

SUMMARY

SENATE BILL 643

INSURANCE PREMIUM FINANCE AMENDMENTS

This act makes several changes to the laws regulating insurance premium finance companies and insurance premium financing agreements.

Section 1 allows premium finance companies to use microfilm, microfiche, and imaging systems, in addition to photographic reproductions, to store records that are required to be kept on file for inspection by the Commissioner. Current law allows only the originals and photographic reproductions.

Section 2 changes the law governing the required contents of a premium financing agreement. The type size requirement is changed from 8-point type to a legible size determined by administrative rules adopted by the Commissioner. This section also allows the agreement to list any mailing address specified by the insured (instead of the insured's residence or place of business).

Section 3 provides that when the insured finances more than one insurance policy under a premium financing agreement, the service charge is computed from the earlier of the date the premium was advanced and the inception date of the insurance policy.

Section 4 provides that the premium finance company or agent can have the agreement delivered to the insured before the due date of the first installment payment. Current law requires the premium finance company or agent to deliver it.

Section 5 makes clear that unrefunded money (of less than \$1.00) goes to the escheat fund at the State Treasurer's office.

Section 6 allows the premium finance company to notify the insured of cancellation of its insurance policy by mail, personal delivery, e-mail, or fax. Currently, the delivery must be by mail. An insurance policy is considered void if the agent or premium finance company informs the insurer that the initial down payment for the premium has been dishonored. Section 6 also requires that the return of unearned premiums from the insurer to the premium finance company when the insurance policy is canceled must be refunded within 30 days after the effective date of the cancellation. If the premium is subject to an audit to determine the final premium amount, the amount to be refunded will be calculated on the deposit premium and must be returned to the premium finance company within 30 days. The insurer cannot offset the return premiums against other debts that the insured owes the insurer on other policies. If the return premiums credited to the insured exceed what the insured owes by \$1.00 or more, the premium finance company must refund the excess to the insured as soon as possible and in any event within 30 days. An unpaid balance owed by the insured after cancellation of his or her policy earns interest at the rate specified in the agreement. This section also requires an insurer to notify a mortgagee or loss payee shown on the insurance policy when it cancels the policy.

Section 7 rewrites the anti-rebate law for insurance premium financing. The current law prohibits premium finance companies and their employees from offering a rebate or any other kind of inducement to an agent, an agent's employee, or any other person as an inducement to the financing of the premium with that company. This section restates this prohibition in a different manner.

Section 8 provides that this act is effective October 1, 1999, and applies to premium financing agreements entered into on or after that date.