

1 AN ACT

2 relating to regulation of sharing of certain profits and fees by
3 premium finance companies and certain related persons or entities.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Section 651.001, Insurance Code, is amended by
6 adding Subdivisions (2-a) and (8-a) to read as follows:

7 (2-a) "Insurance agent" means a person licensed under
8 Subchapter E, Chapter 981 or Chapter 4051, 4052, 4053, 4054, 4055,
9 4056, or 4153.

10 (8-a) "Premium finance agreement servicer" means a
11 person who provides a premium finance company with collection,
12 billing, or other services related to the administration of premium
13 finance agreements.

14 SECTION 2. Section 651.051, Insurance Code, is amended to
15 read as follows:

16 Sec. 651.051. LICENSE REQUIRED. (a) Unless the person is a
17 license holder, a person may not:

18 (1) negotiate, transact, or engage in the business of
19 insurance premium financing in this state; or

20 (2) contract for, charge, or receive directly or
21 indirectly on or in connection with an insurance premium financing
22 any charge, regardless of whether the charge is for interest,
23 compensation, consideration, expense, or otherwise, if in the
24 aggregate the amount of the charge exceeds the amount the person

1 would be permitted by law to charge if the person were not a license
2 holder.

3 (b) This subchapter does not apply to a person who purchases
4 or otherwise acquires a premium finance agreement from a license
5 holder if the license holder:

6 (1) retains the right to service the agreement and to
7 collect payments due under the agreement; and

8 (2) remains responsible for servicing the agreement in
9 compliance with this chapter.

10 SECTION 3. The heading to Subchapter C, Chapter 651,
11 Insurance Code, is amended to read as follows:

12 SUBCHAPTER C. REGULATION OF INSURANCE PREMIUM

13 FINANCE COMPANIES AND OTHERS

14 SECTION 4. Section 651.110, Insurance Code, is amended to
15 read as follows:

16 Sec. 651.110. LIMITATIONS ON CERTAIN INDUCEMENTS OR SHARING
17 OF PROFITS AND FEES [~~REBATE OF FINANCE CHARGE~~]. (a) This section
18 applies to:

19 (1) an [An] insurance premium finance company;

20 (2) an insurance agent;

21 (3) a premium finance agreement servicer; or

22 (4) [~~or~~] an affiliate, employee, agent, or other
23 representative of an insurance premium finance company or a premium
24 finance agreement servicer.

25 (a-1) A person, partnership, or other entity described by
26 Subsection (a) and involved in transactions related to the
27 financing of insurance premiums may not:

1 (1) directly or indirectly pay, allow, give, or offer
2 to pay, ~~[or]~~ allow, or give in any manner to an insurance agent ~~[or~~
3 ~~broker]~~ or an employee of an insurance agent ~~[or broker or to any~~
4 ~~other person]~~ any consideration, ~~[or]~~ compensation, or inducement
5 for soliciting, accepting an application for, delivering, or
6 administering~~[, from the charge for financing specified in the]~~
7 premium finance agreements ~~[agreement or from another source];~~ ~~[or]~~

8 (2) pay, allow, or offer to pay or allow an insurance
9 agent or an employee of an insurance agent to share the profits of
10 any person, partnership, or other entity if any portion of the share
11 of profits is determined, either in whole or in part, by the amount
12 of premium dollars financed or premium finance agreements placed;
13 or

14 (3) pay, allow, or offer to pay or allow an insurance
15 agent or an employee of an insurance agent to share any portion of
16 fees, including late fees, that are related to the premium finance
17 agreement ~~[give or offer to give any valuable consideration or~~
18 ~~inducement of any kind directly or indirectly to an insurance agent~~
19 ~~or broker or an employee of an insurance agent or broker].~~

20 (b) Subsection (a-1) ~~[(a)(2)]~~ does not prohibit the giving
21 or offering of an article of merchandise to an insurance agent or an
22 employee of an insurance agent that has a value of \$10 ~~[\$1]~~ or less
23 on which there is an advertisement of the insurance premium finance
24 company.

25 (c) Subsection (a-1) ~~[(a)]~~ does not prohibit a person,
26 partnership, or other entity described by Subsection (a) ~~[an~~
27 ~~insurance premium finance company]~~ from making a payment under a

1 contractual agreement with a validly organized and operating
2 association of insurance agents or a subsidiary of the association
3 if no part of a payment received under the agreement:

4 (1) is distributed to an insurance agent [~~or broker~~]
5 or an employee of an insurance agent [~~or broker~~]; or

6 (2) inures directly to the benefit of a member of the
7 association or an employee of the member.

8 (d) A contractual agreement under Subsection (c):

9 (1) must be in writing; and

10 (2) is not valid until commissioner [~~department~~]
11 approval is received.

12 (e) Subsection (a-1) does not prohibit an insurance agent
13 from being the sole owner or sole shareholder of an insurance
14 premium finance company and receiving profits and fees of the
15 insurance premium finance company if the insurance agent discloses
16 in writing the agent's ownership interest in the insurance premium
17 finance company to all insureds placed by the agent with the
18 insurance premium finance company owned by the agent.

19 (f) Subsections (a-1) and (e) do not apply to a person,
20 partnership, or other entity described by Subsection (a) and
21 involved in transactions related to the financing of insurance
22 premiums for commercial lines of insurance if, with respect to
23 those transactions:

24 (1) the insurance agent discloses in writing the
25 source of any compensation to be received by the agent as a result
26 of the insured entering into a premium finance agreement;

27 (2) the agent provides in writing to the insured the

1 amount of compensation, as a percentage of the premiums financed,
2 if the amount of compensation received by the agent exceeds two
3 percent of the premium amount financed; and

4 (3) the amount of compensation is based only on actual
5 premiums financed and is not paid as:

6 (A) an advance on future premium finance
7 agreements; or

8 (B) a form of bonus for the agent agreeing to
9 place finance agreements with the premium finance company.

10 SECTION 5. Section 651.158(b), Insurance Code, is amended
11 to read as follows:

12 (b) If an insured pays a premium finance agreement in full
13 as authorized by this section and the agreement included an amount
14 for a charge, the insured is entitled to receive for the prepayment
15 by cash or renewal a refund credit in accordance with Subchapter H,
16 Chapter 342, Finance Code, and rules adopted under that subchapter.
17 If the amount of the credit for prepayment is less than \$5 [~~\$1~~], the
18 insured is not entitled to a refund credit.

19 SECTION 6. (a) The change in law made by this Act applies
20 only to an act committed or a transaction that occurs on or after
21 the effective date of this Act.

22 (b) An act committed or a transaction that occurs before
23 the effective date of this Act is covered by the law in effect on the
24 date that the act was committed or the transaction occurred, and the
25 former law is continued in effect for that purpose.

26 SECTION 7. This Act takes effect immediately if it receives
27 a vote of two-thirds of all the members elected to each house, as

H.B. No. 2965

1 provided by Section 39, Article III, Texas Constitution. If this
2 Act does not receive the vote necessary for immediate effect, this
3 Act takes effect September 1, 2005.

President of the Senate

Speaker of the House

I certify that H.B. No. 2965 was passed by the House on May 13, 2005, by the following vote: Yeas 142, Nays 0, 2 present, not voting; and that the House concurred in Senate amendments to H.B. No. 2965 on May 27, 2005, by the following vote: Yeas 142, Nays 0, 2 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 2965 was passed by the Senate, with amendments, on May 25, 2005, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

Governor