

1-1 By: Seaman (Senate Sponsor - Brimer) H.B. No. 2965
1-2 (In the Senate - Received from the House May 16, 2005;
1-3 May 17, 2005, read first time and referred to Committee on Business
1-4 and Commerce; May 20, 2005, reported adversely, with favorable
1-5 Committee Substitute by the following vote: Yeas 9, Nays 0;
1-6 May 20, 2005, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR H.B. No. 2965 By: Brimer

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to regulation of sharing of certain profits and fees by
1-11 premium finance companies and certain related persons or entities.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Section 651.001, Insurance Code, is amended by
1-14 adding Subdivisions (2-a) and (8-a) to read as follows:

1-15 (2-a) "Insurance agent" means a person licensed under
1-16 Subchapter E, Chapter 981 or Chapter 4051, 4052, 4053, 4054, 4055,
1-17 4056, or 4153.

1-18 (8-a) "Premium finance agreement servicer" means a
1-19 person who provides a premium finance company with collection,
1-20 billing, or other services related to the administration of premium
1-21 finance agreements.

1-22 SECTION 2. Section 651.051, Insurance Code, is amended to
1-23 read as follows:

1-24 Sec. 651.051. LICENSE REQUIRED. (a) Unless the person is a
1-25 license holder, a person may not:

1-26 (1) negotiate, transact, or engage in the business of
1-27 insurance premium financing in this state; or

1-28 (2) contract for, charge, or receive directly or
1-29 indirectly on or in connection with an insurance premium financing
1-30 any charge, regardless of whether the charge is for interest,
1-31 compensation, consideration, expense, or otherwise, if in the
1-32 aggregate the amount of the charge exceeds the amount the person
1-33 would be permitted by law to charge if the person were not a license
1-34 holder.

1-35 (b) This subchapter does not apply to a person who purchases
1-36 or otherwise acquires a premium finance agreement from a license
1-37 holder if the license holder:

1-38 (1) retains the right to service the agreement and to
1-39 collect payments due under the agreement; and

1-40 (2) remains responsible for servicing the agreement in
1-41 compliance with this chapter.

1-42 SECTION 3. The heading to Subchapter C, Chapter 651,
1-43 Insurance Code, is amended to read as follows:

1-44 SUBCHAPTER C. REGULATION OF INSURANCE PREMIUM
1-45 FINANCE COMPANIES AND OTHERS

1-46 SECTION 4. Section 651.110, Insurance Code, is amended to
1-47 read as follows:

1-48 Sec. 651.110. LIMITATIONS ON CERTAIN INDUCEMENTS OR SHARING
1-49 OF PROFITS AND FEES [~~REBATE OF FINANCE CHARGE~~]. (a) This section
1-50 applies to:

1-51 (1) an [An] insurance premium finance company;

1-52 (2) an insurance agent;

1-53 (3) a premium finance agreement servicer; or

1-54 (4) [~~or~~] an affiliate, employee, agent, or other
1-55 representative of an insurance premium finance company or a premium
1-56 finance agreement servicer.

1-57 (a-1) A person, partnership, or other entity described by
1-58 Subsection (a) and involved in transactions related to the
1-59 financing of insurance premiums may not:

1-60 (1) directly or indirectly pay, allow, give, or offer
1-61 to pay, [~~or~~] allow, or give in any manner to an insurance agent [~~or~~
1-62 broker] or an employee of an insurance agent [~~or broker or to any~~
1-63 other person] any consideration, [~~or~~] compensation, or inducement

2-1 for soliciting, accepting an application for, delivering, or
2-2 administering ~~[, from the charge for financing specified in the]~~
2-3 premium finance agreements ~~[agreement or from another source]; [or]~~

2-4 (2) pay, allow, or offer to pay or allow an insurance
2-5 agent or an employee of an insurance agent to share the profits of
2-6 any person, partnership, or other entity if any portion of the share
2-7 of profits is determined, either in whole or in part, by the amount
2-8 of premium dollars financed or premium finance agreements placed;
2-9 or

2-10 (3) pay, allow, or offer to pay or allow an insurance
2-11 agent or an employee of an insurance agent to share any portion of
2-12 fees, including late fees, that are related to the premium finance
2-13 agreement ~~[give or offer to give any valuable consideration or~~
2-14 ~~inducement of any kind directly or indirectly to an insurance agent~~
2-15 ~~or broker or an employee of an insurance agent or broker].~~

2-16 (b) Subsection (a-1) ~~[(a)(2)]~~ does not prohibit the giving
2-17 or offering of an article of merchandise to an insurance agent or an
2-18 employee of an insurance agent that has a value of \$10 ~~[\$1]~~ or less
2-19 on which there is an advertisement of the insurance premium finance
2-20 company.

2-21 (c) Subsection (a-1) ~~[(a)]~~ does not prohibit a person,
2-22 partnership, or other entity described by Subsection (a) ~~[an~~
2-23 ~~insurance premium finance company]~~ from making a payment under a
2-24 contractual agreement with a validly organized and operating
2-25 association of insurance agents or a subsidiary of the association
2-26 if no part of a payment received under the agreement:

2-27 (1) is distributed to an insurance agent ~~[or broker]~~
2-28 or an employee of an insurance agent ~~[or broker]~~; or

2-29 (2) inures directly to the benefit of a member of the
2-30 association or an employee of the member.

2-31 (d) A contractual agreement under Subsection (c):

2-32 (1) must be in writing; and

2-33 (2) is not valid until commissioner ~~[department]~~
2-34 approval is received.

2-35 (e) Subsection (a-1) does not prohibit an insurance agent
2-36 from being the sole owner or sole shareholder of an insurance
2-37 premium finance company and receiving profits and fees of the
2-38 insurance premium finance company if the insurance agent discloses
2-39 in writing the agent's ownership interest in the insurance premium
2-40 finance company to all insureds placed by the agent with the
2-41 insurance premium finance company owned by the agent.

2-42 (f) Subsections (a-1) and (e) do not apply to a person,
2-43 partnership, or other entity described by Subsection (a) and
2-44 involved in transactions related to the financing of insurance
2-45 premiums for commercial lines of insurance if, with respect to
2-46 those transactions:

2-47 (1) the insurance agent discloses in writing the
2-48 source of any compensation to be received by the agent as a result
2-49 of the insured entering into a premium finance agreement;

2-50 (2) the agent provides in writing to the insured the
2-51 amount of compensation, as a percentage of the premiums financed,
2-52 if the amount of compensation received by the agent exceeds two
2-53 percent of the premium amount financed; and

2-54 (3) the amount of compensation is based only on actual
2-55 premiums financed and is not paid as:

2-56 (A) an advance on future premium finance
2-57 agreements; or

2-58 (B) a form of bonus for the agent agreeing to
2-59 place finance agreements with the premium finance company.

2-60 SECTION 5. Section 651.158(b), Insurance Code, is amended
2-61 to read as follows:

2-62 (b) If an insured pays a premium finance agreement in full
2-63 as authorized by this section and the agreement included an amount
2-64 for a charge, the insured is entitled to receive for the prepayment
2-65 by cash or renewal a refund credit in accordance with Subchapter H,
2-66 Chapter 342, Finance Code, and rules adopted under that subchapter.
2-67 If the amount of the credit for prepayment is less than \$5 ~~[\$1]~~, the
2-68 insured is not entitled to a refund credit.

2-69 SECTION 6. (a) The change in law made by this Act applies

3-1 only to an act committed or a transaction that occurs on or after
3-2 the effective date of this Act.

3-3 (b) An act committed or a transaction that occurs before
3-4 the effective date of this Act is covered by the law in effect on the
3-5 date that the act was committed or the transaction occurred, and the
3-6 former law is continued in effect for that purpose.

3-7 SECTION 7. This Act takes effect immediately if it receives
3-8 a vote of two-thirds of all the members elected to each house, as
3-9 provided by Section 39, Article III, Texas Constitution. If this
3-10 Act does not receive the vote necessary for immediate effect, this
3-11 Act takes effect September 1, 2005.

3-12 * * * * *