

By: Brimer

S.B. No. 178

A BILL TO BE ENTITLED

AN ACT

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

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

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

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

(8-a) "Premium finance agreement servicer" means a person, partnership, or other entity that provides a premium finance company with collection, billing, or other services related to the administration of premium finance agreements.

SECTION 2. The heading to Subchapter C, Chapter 651, Insurance Code, is amended to read as follows:

SUBCHAPTER C. REGULATION OF INSURANCE PREMIUM

FINANCE COMPANIES AND OTHERS

SECTION 3. Section 651.110, Insurance Code, is amended to read as follows:

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

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

(2) an insurance agent;

1           (3) a premium finance agreement servicer; or

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

5           (a-1) A person, partnership, or other entity described by  
6 Subsection (a) may not:

7           (1) pay, allow, or offer to pay or allow in any manner  
8 to an insurance agent [~~or broker~~] or an employee of an insurance  
9 agent [~~or broker or to any other person~~] any consideration or  
10 compensation for soliciting, accepting an application for,  
11 delivering, or administering[~~, from the charge for financing~~  
12 ~~specified in the~~] premium finance agreements [~~agreement or from~~  
13 ~~another source~~]; [~~or~~]

14           (2) pay, allow, or offer to pay or allow an insurance  
15 agent or an employee of an insurance agent to share in the profits  
16 of any person, partnership, or other entity if any portion of the  
17 share of profits is determined, either in whole or in part, by the  
18 amount of premium dollars financed or premium finance agreements  
19 placed;

20           (3) pay, allow, or offer to pay or allow an insurance  
21 agent or an employee of an insurance agent to share in any portion  
22 of fees, including late fees, that are related to the premium  
23 finance agreement; or

24           (4) give or offer to give any valuable consideration  
25 or inducement of any kind directly or indirectly to an insurance  
26 agent [~~or broker~~] or an employee of an insurance agent [~~or broker~~].

27           (b) Subsection (a-1) [~~(a)(2)~~] does not prohibit the giving

1 or offering of an article of merchandise to an insurance agent or an  
2 employee of an insurance agent that has a value of \$10 [~~\$1~~] or less  
3 on which there is an advertisement of the insurance premium finance  
4 company.

5 (c) Subsection (a-1) [~~(a)~~] does not prohibit a person,  
6 partnership, or other entity described by Subsection (a) [~~an~~  
7 ~~insurance premium finance company~~] from making a payment under a  
8 contractual agreement with a validly organized and operating  
9 association of insurance agents or a subsidiary of the association  
10 if no part of a payment received under the agreement:

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

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

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

16 (1) must be in writing; and

17 (2) is not valid until commissioner [~~department~~]  
18 approval is received.

19 (e) Subsection (a-1) does not prohibit an insurance agent  
20 from being the sole owner or sole shareholder of an insurance  
21 premium finance company and receiving the profits and fees of the  
22 insurance premium finance company if:

23 (1) the insurance agent discloses the agent's  
24 ownership interest in the insurance premium finance company to each  
25 insured placed by the agent with the insurance premium finance  
26 company owned by the agent;

27 (2) the disclosure to the insured appears prominently

1 on the insurance premium finance application immediately above the  
2 signature block for the insured; and

3 (3) the disclosure language is substantially similar  
4 to the following:

5 THE INSURANCE PREMIUM FINANCING AGREEMENT YOU ARE  
6 ENTERING INTO IS WITH A PREMIUM FINANCE COMPANY OWNED  
7 SOLELY BY YOUR INSURANCE AGENT. INCOME GENERATED BY  
8 THE FEES AND FINANCE CHARGES IN THIS AGREEMENT WILL BE  
9 SHARED WITH YOUR INSURANCE AGENT.

10 SECTION 4. (a) The change in law made by this Act applies  
11 only to an act committed or a transaction that occurs on or after  
12 the effective date of this Act.

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

17 SECTION 5. This Act takes effect immediately if it receives  
18 a vote of two-thirds of all the members elected to each house, as  
19 provided by Section 39, Article III, Texas Constitution. If this  
20 Act does not receive the vote necessary for immediate effect, this  
21 Act takes effect September 1, 2005.