

1-1 By: Brimer S.B. No. 178
1-2 (In the Senate - Filed January 12, 2005; February 1, 2005,
1-3 read first time and referred to Committee on Business and Commerce;
1-4 May 16, 2005, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 7, Nays 0; May 16, 2005,
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 178 By: Fraser

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, or
1-17 4055.

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

1-22 SECTION 2. The heading to Subchapter C, Chapter 651,
1-23 Insurance Code, is amended to read as follows:

1-24 SUBCHAPTER C. REGULATION OF INSURANCE PREMIUM
1-25 FINANCE COMPANIES AND OTHERS

1-26 SECTION 3. Section 651.110, Insurance Code, is amended to
1-27 read as follows:

1-28 Sec. 651.110. LIMITATIONS ON CERTAIN INDUCEMENTS OR SHARING
1-29 OF PROFITS AND FEES [REBATE OF FINANCE CHARGE]. (a) This section
1-30 applies to:

1-31 (1) an [An] insurance premium finance company;

1-32 (2) an insurance agent;

1-33 (3) a premium finance agreement servicer; or

1-34 (4) [or] an affiliate, employee, agent, or other
1-35 representative of an insurance premium finance company or a premium
1-36 finance agreement servicer.

1-37 (a-1) A person, partnership, or other entity described by
1-38 Subsection (a) may not:

1-39 (1) pay, allow, or offer to pay or allow in any manner
1-40 to an insurance agent [or broker] or an employee of an insurance
1-41 agent [or broker or to any other person] any consideration or
1-42 compensation for soliciting, accepting an application for,
1-43 delivering, or administering[, from the charge for financing
1-44 specified in the] premium finance agreements [agreement or from
1-45 another source]; [or]

1-46 (2) pay, allow, or offer to pay or allow an insurance
1-47 agent or an employee of an insurance agent to share in the profits
1-48 of any person, partnership, or other entity if any portion of the
1-49 share of profits is determined, either in whole or in part, by the
1-50 amount of premium dollars financed or premium finance agreements
1-51 placed;

1-52 (3) pay, allow, or offer to pay or allow an insurance
1-53 agent or an employee of an insurance agent to share in any portion
1-54 of fees, including late fees, that are related to the premium
1-55 finance agreement; or

1-56 (4) give or offer to give any valuable consideration
1-57 or inducement of any kind directly or indirectly to an insurance
1-58 agent [or broker] or an employee of an insurance agent [or broker].

1-59 (b) Subsection (a-1) [(a)(2)] does not prohibit the giving
1-60 or offering of an article of merchandise to an insurance agent or an
1-61 employee of an insurance agent that has a value of \$10 [\$1] or less
1-62 on which there is an advertisement of the insurance premium finance
1-63 company.

2-1 (c) Subsection (a-1) [~~(a)~~] does not prohibit a person,
2-2 partnership, or other entity described by Subsection (a) [~~an~~
2-3 ~~insurance premium finance company~~] from making a payment under a
2-4 contractual agreement with a validly organized and operating
2-5 association of insurance agents or a subsidiary of the association
2-6 if no part of a payment received under the agreement:

2-7 (1) is distributed to an insurance agent [~~or broker~~]
2-8 or an employee of an insurance agent [~~or broker~~]; or

2-9 (2) inures directly to the benefit of a member of the
2-10 association or an employee of the member.

2-11 (d) A contractual agreement under Subsection (c):

2-12 (1) must be in writing; and

2-13 (2) is not valid until commissioner [~~department~~]
2-14 approval is received.

2-15 (e) Subsection (a-1) does not prohibit an insurance agent
2-16 from being the sole owner or sole shareholder of an insurance
2-17 premium finance company and receiving the profits and fees of the
2-18 insurance premium finance company if:

2-19 (1) the insurance agent discloses the agent's
2-20 ownership interest in the insurance premium finance company to each
2-21 insured placed by the agent with the insurance premium finance
2-22 company owned by the agent;

2-23 (2) the disclosure to the insured appears prominently
2-24 on the insurance premium finance application immediately above the
2-25 signature block for the insured; and

2-26 (3) the disclosure language is substantially similar
2-27 to the following:

2-28 THE INSURANCE PREMIUM FINANCING AGREEMENT YOU ARE
2-29 ENTERING INTO IS WITH A PREMIUM FINANCE COMPANY OWNED
2-30 SOLELY BY YOUR INSURANCE AGENT. INCOME GENERATED BY
2-31 THE FEES AND FINANCE CHARGES IN THIS AGREEMENT WILL BE
2-32 SHARED WITH YOUR INSURANCE AGENT.

2-33 SECTION 4. (a) The change in law made by this Act applies
2-34 only to an act committed or a transaction that occurs on or after
2-35 the effective date of this Act.

2-36 (b) An act committed or a transaction that occurs before the
2-37 effective date of this Act is covered by the law in effect on the
2-38 date that the act was committed or the transaction occurred, and the
2-39 former law is continued in effect for that purpose.

2-40 SECTION 5. This Act takes effect immediately if it receives
2-41 a vote of two-thirds of all the members elected to each house, as
2-42 provided by Section 39, Article III, Texas Constitution. If this
2-43 Act does not receive the vote necessary for immediate effect, this
2-44 Act takes effect September 1, 2005.

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