

By: Eiland

H.B. No. 2451

A BILL TO BE ENTITLED

AN ACT

relating to insurance premium finance agreements regulated by the Texas Department of Insurance.

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

SECTION 1. Section 651.001(5), Insurance Code, is amended to read as follows:

(5) "Insurer" means an entity organized or authorized to engage in the business of insurance under this code as a capital stock insurance company, title insurance company, reciprocal or interinsurance exchange, Lloyd's plan, fraternal benefit society, mutual or mutual assessment company of any kind, statewide mutual assessment company, local mutual aid association, burial association, county or farm mutual insurance company, fidelity, guaranty, or surety company, ~~[or]~~ trust company, or eligible surplus lines insurer. The term includes:

(A) the Texas Windstorm Insurance Association;

(B) the Texas Automobile Insurance Plan Association; and

(C) the Texas Medical Liability Insurance Underwriting Association.

SECTION 2. Section 651.151(b), Insurance Code, is amended to read as follows:

(b) A premium finance agreement must be dated and signed by the insured. ~~[An agreement may be signed on behalf of the insured~~

1 ~~by the insured's agent if:~~

2 ~~(1) the agreement contains policies for other than~~
3 ~~personal, family, or household purposes; and~~

4 ~~(2) the premiums for the policies exceed \$1,000.]~~

5 SECTION 3. Section 651.155, Insurance Code, is amended to
6 read as follows:

7 Sec. 651.155. RESPONSIBILITIES OF INSURANCE AGENT AND
8 INSURANCE PREMIUM FINANCE COMPANY. (a) Each insurance premium
9 finance company is responsible for the acts of its officers,
10 directors, employees, and contracted insurance agents.

11 (b) An insurance premium finance company must have a written
12 contract with each [An] insurance agent that requires the agent, at
13 a minimum, to [shall]:

14 (1) prepare a premium finance agreement; ~~and~~

15 (2) deliver to the insured each disclosure statement
16 required by law; and

17 (3) timely remit or forward insurance premiums to the
18 insurance premium finance company or appropriate insurer.

19 SECTION 4. Section 651.161, Insurance Code, is amended by
20 adding Subsection (g) to read as follows:

21 (g) The insurance premium finance company may not cancel an
22 insurance contract if the insurance agent failed to timely remit or
23 forward insurance premiums to the insurance premium finance company
24 or appropriate insurer.

25 SECTION 5. Section 651.162, Insurance Code, is amended by
26 amending Subsections (c), (d), (f), and (g), and by adding
27 Subsection (h) to read as follows:

1 (c) The insurer may not deduct from the unearned premiums
2 returned to the insurance premium finance company the amount of any
3 unearned commission due from the agent writing the insurance [~~if~~
4 ~~the insurer notifies the agent to return the unearned commission to~~
5 ~~the insurance premium finance company. If the agent does not return~~
6 ~~the unearned commission to the insurance premium finance company~~
7 ~~before the 91st day after the cancellation date, the insurer shall~~
8 ~~remit the unearned commission to the insurance premium finance~~
9 ~~company before the 121st day after the cancellation date].~~

10 (d) Notwithstanding Subsection (c) [~~Subsections (a)-(c)~~],
11 an agent is liable for the return of unearned commissions on an
12 insurance contract written through the Texas Windstorm Insurance
13 Association, the Texas Automobile Insurance Plan Association, or
14 the Texas Medical Liability Insurance Underwriting Association. An
15 agent placing business through one of those plans shall return the
16 unearned commissions to the insurance premium finance company
17 before the 61st day after the date the agent is notified of the
18 cancellation.

19 (f) If the insurance premium finance company failed to
20 comply with Section 651.165, the insurer shall determine, not later
21 than the 30th day after the cancellation date, whether it has a
22 ~~including the Texas Windstorm Insurance Association, the Texas~~
23 ~~Automobile Insurance Plan Association, and the Texas Medical~~
24 ~~Liability Insurance Underwriting Association, may comply with its]~~
25 legal duty to return the unearned premiums due under the insurance
26 contract to an [~~the~~] insurance premium finance company before [~~by~~]
27 returning those unearned premiums to the producing agent. If the

1 producing agent does not return unearned premiums to the insurance
2 premium finance company before the 91st day after the cancellation
3 date, the insurer remains liable and shall remit, on demand, the
4 unearned premiums to the insurance premium finance company not
5 later than the 60th day after the date of the demand.

6 (g) If the crediting of return premiums and commissions to
7 the account of an insured results in a surplus over the amount due
8 from the insured, the insurance premium finance company shall
9 refund the excess to the insured. If the amount of the excess is
10 less than \$5 [~~\$1~~], the insured is not entitled to a refund.

11 (h) The insurance premium finance company may not hold the
12 insured liable for any amount covered by the unearned premium or
13 unearned commission returned, or to be returned, by the insurer.

14 SECTION 6. The heading to Section 651.165, Insurance Code,
15 is amended to read as follows:

16 Sec. 651.165. REQUIRED NOTICE OF CERTAIN PREMIUM FINANCE
17 AGREEMENTS AND PREMIUM FINANCE FUNDS.

18 SECTION 7. Section 651.165, Insurance Code, is amended by
19 amending Subsections (a) and (b) and by adding Subsection (d) to
20 read as follows:

21 (a) An insurance premium finance company that enters into a
22 premium finance agreement that includes an assignment or power of
23 attorney shall notify the insurer [~~or the Texas Windstorm Insurance~~
24 ~~Association, the Texas Automobile Insurance Plan Association, or~~
25 ~~the Texas Medical Liability Insurance Underwriting Association]~~
26 whose premiums are being financed:

27 (1) of the existence of the agreement; and

1 (2) of the information required under Section
2 651.151(c) [to whom the premium payment has been made].

3 (b) An insurance premium finance company shall [~~notify and~~
4 fund all premiums to the insurer [~~a county mutual insurance~~
5 ~~company~~] unless the insurance premium finance company is authorized
6 in writing by the insurer [~~county mutual insurance company~~] to
7 [~~notify or~~] fund an insurance agent or managing general agent.

8 (d) If the insurer authorizes the insurance premium finance
9 company to fund premiums to an insurance agent or managing general
10 agent, the insurer is liable for the insurance premium if the
11 insurance agent does not timely remit or forward the insurance
12 premium to the insurance premium finance company or appropriate
13 insurer.

14 SECTION 8. Section 651.162(e), Insurance Code, is repealed.

15 SECTION 9. The changes in law made by this Act apply only to
16 an insurance premium finance agreement entered into on or after the
17 effective date of this Act. An insurance premium finance agreement
18 that is entered into before the effective date of this Act is
19 governed by the law in effect on the date the insurance premium
20 finance agreement was entered, and that law is continued in effect
21 for that purpose.

22 SECTION 10. This Act takes effect immediately if it
23 receives a vote of two-thirds of all the members elected to each
24 house, as provided by Section 39, Article III, Texas Constitution.
25 If this Act does not receive the vote necessary for immediate
26 effect, this Act takes effect September 1, 2009.