

CF 7r2374

By: Senators Della and Astle

Introduced and read first time: January 31, 1997

Assigned to: Finance

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 25, 1997

CHAPTER ____

1 AN ACT concerning

2 Premium Financing - Administration, Cancellation, and Prohibitions

3 FOR the purpose of altering certain provisions of law relating to premium finance
 4 companies and premium finance agreements; altering certain requirements and
 5 contents of premium finance agreements, their terms, administration, charges, and
 6 cancellation; authorizing the financing of certain additional ~~or renewal~~ premiums
 7 under certain circumstances, subject to certain conditions and limitations; requiring
 8 certain notices to certain persons under certain circumstances; ~~limiting certain~~
 9 ~~deductions with regard to certain policies under certain circumstances~~; providing
 10 for certain effects of a notice of dishonor under certain circumstances; altering and
 11 adding certain provisions relating to premiums and their return, including
 12 calculation, responsibility, application, and interest; prohibiting certain acts by
 13 certain persons, including insurers and agents, subject to certain penalties; and
 14 generally relating to premium finance companies and premium finance agreements.

15 BY adding to

16 Article - Insurance

17 Section 23-302.1, 23-302.2, ~~23-310~~, 23-403.1, 23-505.1, and 23-505.2

18 Annotated Code of Maryland

19 (1996 Volume)

20 (As enacted by Chapter 11 of the Acts of the General Assembly of 1996)

21 BY repealing and reenacting, with amendments,

22 Article - Insurance

23 Section 23-405

24 Annotated Code of Maryland

25 (1996 Volume)

2

1 (As enacted by Chapter 11 of the Acts of the General Assembly of 1996)

2 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
3 MARYLAND, That the Laws of Maryland read as follows:

4 **Article - Insurance**

5 23-302.1.

6 (A) AN INSURED MAY FINANCE AN ADDITIONAL ~~OR RENEWAL~~ PREMIUM
7 ~~MAY BE FINANCED~~ IF:

8 (1) THE INSURED HAS PAID THE DOWN PAYMENT, IF ANY, REQUIRED
9 BY THE PREMIUM FINANCE COMPANY ON THE ADDITIONAL ~~OR RENEWAL~~
10 PREMIUM; AND

11 (2) THE PREMIUM FINANCE COMPANY DELIVERS OR MAILES A WRITTEN
12 NOTICE TO THE INSURED AT THE LAST KNOWN ADDRESS OF THE INSURED
13 INDICATING THAT:

14 (I) THERE IS A REVISED PREMIUM FINANCE AGREEMENT; AND

15 (II) IN THE EVENT OF DEFAULT IN PAYMENT OF THE REVISED
16 PREMIUM FINANCE AGREEMENT, THE POLICY MAY BE CANCELED.

17 (B) AN INSURER MAY NOT DELAY CANCELLATION FOR THE SOLE PURPOSE
18 OF APPLYING PREMIUMS ON DEPOSIT TO ANY ADDITIONAL PREMIUM.

19 23-302.2.

20 ~~(A) IF AN INSURER RECEIVES NOTICE OF A FINANCED INSURANCE PREMIUM,~~
21 ~~THE INSURER SHALL, WITHIN 5 10 BUSINESS DAYS AFTER ITS CALCULATION, NOTIFY~~
22 ~~THE INSURED, INSURER'S AGENT, AND PREMIUM FINANCE COMPANY OF ANY~~
23 ~~ADDITIONAL PREMIUM ARISING UNDER THE FINANCED POLICY.~~

24 ~~(B) IF THE INSURER FAILS TO NOTIFY THE INSURED, INSURER'S AGENT, OR~~
25 ~~PREMIUM FINANCE COMPANY OF AN ADDITIONAL PREMIUM UNDER SUBSECTION~~
26 ~~(A) OF THIS SECTION, THE INSURER MAY NOT DEDUCT THE ADDITIONAL PREMIUM~~
27 ~~OR ANY PART OF THE ADDITIONAL PREMIUM FROM THE CALCULATION OF~~
28 ~~UNEARNED PREMIUM ON CANCELLATION OF THE POLICY.~~

29 ~~23-310.~~

30 ~~A PRODUCER, AGENT, OR BROKER MAY ONLY BE APPOINTED AS AN AGENT OF~~
31 ~~A PREMIUM FINANCE COMPANY IF THE APPOINTMENT IS IN WRITING AND IS FILED~~
32 ~~WITH THE COMMISSIONER.~~

33 23-403.1.

34 IF AN INSURER RECEIVES NOTICE FROM AN AGENT OR PREMIUM FINANCE
35 COMPANY, WITHIN 15 BUSINESS DAYS AFTER RECEIPT OF THE INITIAL DOWN
36 PAYMENT FOR THE COVERAGE BEING FINANCED, THAT THE INITIAL DOWN
37 PAYMENT HAS BEEN DISHONORED A SECOND TIME BY A FINANCIAL INSTITUTION,
38 THERE IS NO VALID INSURANCE CONTRACT OR INSURANCE CONTRACTS, AND THE
39 POLICY SHALL BE VOIDED.

1 23-405.

2 (a) (1) Whenever an insurance contract is canceled in accordance with this
3 subtitle, the insurer shall return any gross unearned premiums that are due under the
4 insurance contract; [less agents' earned commissions] ~~COMPUTED PRO RATA, AND~~
5 ~~EXCLUDING ADMINISTRATIVE FEES FILED WITH THE COMMISSIONER~~; to the
6 premium finance company for the account of the insured within a reasonable time not
7 exceeding [60] 45 days after:

8 (i) receipt by the insurer of [the] A ~~WRITTEN~~ notice of cancellation
9 FROM THE PREMIUM FINANCE COMPANY; or

10 (ii) completion of any payroll audit necessary to determine the amount
11 of premium earned while the insurance contract was in force.

12 (2) ~~A RETURN PREMIUM SHALL BE SUBJECT TO ANY MINIMUM EARNED~~
13 ~~PREMIUM STATED IN THE INSURANCE CONTRACT.~~

14 ~~(3)~~ An audit under paragraph (1)(ii) of this subsection shall be performed
15 within [60] 45 days after the insurer receives the notice of cancellation.

16 (b) (1) ~~{~~After the insurer returns to the premium finance company any gross
17 unearned premiums that are due under the insurance contract, the premium finance
18 company shall refund to the insured the amount of unearned premium that exceeds any
19 amount due under the premium finance agreement.~~}~~ ~~IF CREDITING OF RETURN~~
20 ~~PREMIUMS TO THE ACCOUNT OF THE INSURED CAUSES A SURPLUS OVER THE~~
21 ~~AMOUNT DUE FROM THE INSURED, THE PREMIUM FINANCE COMPANY SHALL~~
22 ~~REFUND THE SURPLUS TO THE INSURED AS SOON AS REASONABLY POSSIBLE NOT~~
23 ~~EXCEEDING 15 BUSINESS DAYS AFTER THE PREMIUM FINANCE COMPANY RECEIVES~~
24 ~~ALL RETURN PREMIUMS.~~

25 (2) A premium finance company need not make a refund to the insured if
26 the amount of the refund would be less than \$5.

27 (C) WHENEVER AN INSURER, AFTER RECEIVING NOTICE OF THE EXISTENCE
28 OF A PREMIUM FINANCE AGREEMENT, RETURNS ANY UNEARNED PREMIUMS TO A
29 PERSON OTHER THAN THE PREMIUM FINANCE COMPANY NAMED IN THE PREMIUM
30 FINANCE AGREEMENT, THE INSURER SHALL BE DIRECTLY RESPONSIBLE TO THE
31 PREMIUM FINANCE COMPANY FOR ALL UNEARNED PREMIUMS ARISING FROM THE
32 CANCELLATION OF THE PREMIUM FINANCE AGREEMENT.

33 (D) ~~IF THE INSURER HAS PRIOR NOTICE OF THE EXISTENCE OF A PREMIUM~~
34 ~~FINANCE AGREEMENT, THE INSURER SHALL RETURN TO THE PREMIUM FINANCE~~
35 ~~COMPANY ANY UNEARNED COMMISSION THAT THE AGENT DOES NOT REMIT TO~~
36 ~~THE PREMIUM FINANCE COMPANY WITHIN THE APPLICABLE PERIOD SPECIFIED IN~~
37 ~~SUBSECTION (A)(1) OF THIS SECTION.~~

38 ~~(E)~~ (1) AN INSURER THAT FAILS TO RETURN ANY PREMIUM REQUIRED
39 UNDER THIS SECTION SHALL PAY INTEREST OF ~~40% PER YEAR~~ 1% PER MONTH OF
40 THE UNEARNED PREMIUM THAT HAS NOT BEEN RETURNED UNTIL THE UNEARNED
41 PREMIUM IS RETURNED.

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1 (2) ANY PAYMENT UNDER THIS SUBSECTION TO THE PREMIUM
2 FINANCE COMPANY SHALL BE CREDITED TO THE ACCOUNT OF THE INSURED.

3 ~~(F)~~ (E) AN INSURER MAY NOT DEDUCT FROM ANY RETURN PREMIUM ANY
4 AMOUNT OWED TO THE INSURER BY THE INSURED UNDER ANY OTHER INSURANCE
5 CONTRACT.

6 ~~(G) ANY OUTSTANDING BALANCE REMAINING AFTER A PREMIUM FINANCE
7 AGREEMENT IS CANCELED MAY EARN INTEREST AT THE RATE STATED IN THE
8 PREMIUM FINANCE AGREEMENT UNTIL THE BALANCE IS PAID IN FULL.~~

9 23-505.1.

10 ~~AN INSURER, ITS AGENT, BROKER, OR PRODUCER MAY NOT:~~ AN INSURER THAT
11 MARKETS THROUGH INDEPENDENT AGENTS AS DEFINED IN THIS ARTICLE MAY
12 NOT, WITH RESPECT TO COMMERCIAL AUTOMOBILE, FIRE, OR LIABILITY
13 INSURANCE:

14 (1) REFUSE TO ISSUE OR DENY THE ISSUANCE OF A POLICY ~~FOR~~
15 ~~COMMERCIAL AUTOMOBILE, FIRE, OR LIABILITY INSURANCE~~ BECAUSE PREMIUMS
16 HAVE BEEN ADVANCED BY A REGISTERED PREMIUM FINANCE COMPANY NOT
17 AFFILIATED WITH THE INSURER; OR

18 (2) REQUIRE AN INSURED TO USE A PARTICULAR PREMIUM FINANCE
19 COMPANY OR OTHER INSTALLMENT PLAN.

20 23-505.2.

21 ~~AN INSURER OR ITS AGENT~~ THAT MARKETS THROUGH INDEPENDENT AGENTS
22 AS DEFINED IN THIS ARTICLE MAY NOT, WITH RESPECT TO COMMERCIAL
23 AUTOMOBILE, FIRE, OR LIABILITY INSURANCE, DISCRIMINATE, INTIMIDATE, OR
24 RETALIATE AGAINST A PRODUCER, AN AGENT, BROKER, OR INSURED THAT USES
25 PREMIUM FINANCING BY DENYING THE PRODUCER, AGENT, BROKER, OR INSURED
26 THE SAME RIGHTS ACCORDED TO PRODUCERS, AGENTS, BROKERS, OR INSURED
27 WHO PAY PREMIUMS IN A DIFFERENT MANNER.

28 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
29 October 1, 1997.